320.

SUPREME COURT OF THE UNITED STATES.

No. 141.

ELEAZER F. BACKUS, PLFF. IN ER.

VS

WM. GOULD AND DAVID BANKS, WHO SUE AS WELL FOR THE UNITED STATES AS THEMSELVES.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE NORTHERN DISTRICT OF NEW YORK.

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J. & G. S. Gideon, Printers.

United States of America:

The President of the United States of America, to the judges of the circuit court of the United States for the second circuit and northern district of New York, greeting:

[SEAL.] Because, in the record and proceedings, as also in the rendition of a judgment in a plea of debt, which is in the said circuit, in the said northern district of New York, before you, between William Gould and David Banks, who sue as well for the United States of America as for themselves, plaintiffs, and Eleazer F. Backus, defendant, manifest error hath happened to the great damage of the said Eleazer F. Backus, as by his complaint appears; and it being fit that the error if any there hath been should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf.

You are hereby commanded, that if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this first Monday of January, in the year of our Lord one thousand eight hundred and forty-five, and of the independence of the United States the sixty-ninth.

ANSON LITTLE,
Clerk of the circuit court of the United States, for the second circuit and northern district of New York.

SAM'L CHEEVER,
Att'y for def't.

Received this 18th day of October, 1845.

ANSON LITTLE, *Clerk.*

Circuit court of the United States, for the northern district of New York, in the second circuit.

William Gould and David Banks, who sue as well for the United States of America as for themselves,
vs.
Eleazer F. Backus.

United States of America, northern district of New York, ss:

I, Anson Little, clerk of the circuit court of the United States for the northern district of New York, in the second circuit, do hereby certify, to the Supreme Court of the United States, that the judgment, record, bill of exceptions, assignment of errors, and joinder in error, hereunto annexed, are true copies of their respective originals, remaining on the files of my office, in the above entitled cause.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said circuit court, this twenty-eighth [L. S.] day of November, in the year of our Lord one thousand eight hundred and forty-five, and of the independence of the United States of America the seventieth.

ANSON LITTLE, *Clerk*.

United States of America, ss:

To William Gould and David Banks, who sue as well for the United States as for themselves, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court, for the second circuit and northern district of New York, wherein Eleazer F. Backus is plaintiff, and you are defendants in error, to shew cause, if any there be, why the judgment, in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this twenty-second day of February, in the year of our Lord 1845.

J. NELSON,

One of the justices of the Supreme Court of the United States.

November 18, 1845.

We admit due service of a copy of the above citation this day, 18th Nov., 1845.

WILLIAM GOULD,
DAVID BANKS,
Def'ts in error, in pro. per.
By J. L. WENDELL.

Pleas in the circuit court of the United States, to wit, in the second circuit and northern district of New York, before the judges of the said court, at Canandaigua, in the county of Ontario, of June term, in the year of our Lord one thousand eight hundred and forty-two.

LITTLE, *Clerk*.

Circuit court of the United States,
for the second circuit and northern district of New York, ss:

Be it remembered, that in the term of October, in the year of our Lord one thousand eight hundred and thirty-nine, before the judges of the circuit court of the United States, to wit, of the second circuit and northern district of New York, at Albany, came William Gould and David Banks, who sue as well for the United States of America as for themselves, in this behalf, in their proper persons, and brought into the said court, before the judges thereof then there, their certain bill against Eleazer F. Backus, in custody, &c., of a plea that he render to the United States of America, and to the said William Gould and David Banks, who sue as aforesaid, the sum of fifty thousand dollars, of the money of account of the United States, which he owes to and unjustly detains from them; and these are pledges for the prosecution thereof, to wit, John Doe and Richard Roe; which said bill follows in these words, to wit:

Northern district of New York, ss:

William Gould and David Banks, citizens of the State of New York, who sue as well for the United States of America as for themselves, in this behalf, in their proper persons, complain of Eleazer F. Backus, a citizen of the State of Pennsylvania, in custody, &c., of a plea that he render to the United States of America, and to the said William Gould and David Banks, who sue as aforesaid, the sum of fifty thousand dollars, of the money of account of the United States, which he owes to and unjustly detains from them; for that, whereas, the said William Gould and David Banks, on the seventeenth day of April, in the year of our Lord one thousand eight hundred and twenty-four, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States for the said northern district, were and still are citizens of the United States; and, on the day and year aforesaid, and for a long time thereafter, these partners in the business of book-selling, conducting the same in the city of New York, in the southern district of New York, under the name, style, and firm of "Gould & Banks," they, the said plaintiffs, then and still residing in the city of New York, in the said southern district of New York; and being such partners, they, the said William Gould and David Banks, on the day and year aforesaid, were proprietors of a certain book, entitled "Reports of Cases Argued and Determined in the Supreme Court, and in the Court for the Trial of Impeachments and the Correction of Errors, of the State of New York: by Esek. Cowen, counsellor at law, vol. 1;" and being such proprietors of the said book, they, the said William Gould and David Banks did, on the day and year aforesaid, deposit a printed copy of the title of the said book in the clerk's office of the district court of the United States, for the southern district of New York, in the second circuit, and the clerk of the said district court did forthwith, on the day and year aforesaid, record the said copy of the title of the said book in a book kept by him for that purpose; and the said William Gould and David Banks did, within two months from the date of the record of the said title, cause a copy of the said record to be published, for the space of four weeks, in one of the newspapers printed in the United States; and did forthwith print and publish a large edition of the said book, to wit, three thousand copies, and in each of the copies of the said book, so published as aforesaid, caused the copy of the said record of the said title of the said book so made by the said clerk as aforesaid, to be inserted at full length in the page immediately following the title of such book; and within six months after the publishing of the said book, to wit, on the twenty-sixth day of July, in the year of our Lord one thousand eight hundred and twenty-four, did deliver to the Secretary of State of the United States of America a copy of the said book, to be preserved in his office.

By means of which said several premises, and the statutes in such cases made and provided, the said William Gould and David Banks obtained the copy right of the said book, and the sole right and liberty of printing, re-printing, publishing, and vending the same for the term of twenty-eight years, from the time of the recording of the title thereof in the said clerk's office as aforesaid, to wit, from the said seventeenth day of April, in the year of our Lord one thousand eight hundred and twenty-four aforesaid. Nevertheless, the said Eleazer F. Backus, the defendant in this cause, well knowing the premises, but not regarding the statutes in such cases made and provided, and continuing, and wrongfully and injuriously intending, to injure the said William Gould and David Banks, and to deprive them of the profits, emoluments, and advantages which they might and otherwise would have derived and acquired from the sale of the said book; and also to deprive them of the benefit of their said copy right, on the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and thirty-eight, and on divers other days and times between that day and the day of the commencement of this suit, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States of America, for the said northern district, wrongfully and injuriously, without the consent of the said William Gould and David Banks, or of either of them, against the form of the statute in such case made and provided, and contrary to the true intent and meaning thereof, did publish, expose to sale, and sell, divers, to wit, one thousand copies of a certain other book or work entitled "A Digest of the cases decided and reported in the superior court of the city of New York, the vice chancellor's court, the supreme court of judicature, the court of chancery, and the court for the correction of errors of the State of New York, from 1823 to Oct., 1836; with tables of the names of the cases, and of the titles and references; being a Supplement to Johnson's Digest."

A great part of which said last mentioned book, or work, to wit, seven sheets thereof, had before that time been wrongfully and injuriously, and with the knowledge of the said Eleazer F. Backus, copied from the said book of the said William Gould and David Banks, in this count first above mentioned, without the consent of the said William Gould and David Banks, or of either of them, and against the form of the statute in such case made and provided; which said one thousand copies of the said book, or work, so published by the said Eleazer F. Backus, contained in the whole seven thousand sheets of the said book of the said William Gould and David Banks, in this count first above mentioned. By means of which said several premises, and by force of the statute in such case made and provided, an action hath accrued to the said William Gould and David Banks, who sue in this behalf, as well for the United States as for themselves, to demand and have, of the said Eleazer F. Backus, the sum of fifty cents for every sheet so published, exposed to sale, and sold by him, amounting in the whole to the sum of three thousand five hundred dollars, part of the said sum of fifty thousand dollars above demanded.

And, also, for that whereas the said William Gould and David Banks, on the sixth day of October, in the year of our Lord one thousand eight hundred and twenty-four, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States for the said northern district, were and still are citizens of the United States, and on the day and year last aforesaid, and for a long time thereafter, were partners in the business of book selling, conducting the same in the city of New York, in the southern district of New York, under the name, style, and firm of "Gould and Banks;" they, the said plaintiffs, then and still residing in the city of New York, in the said southern district of New York, and being such partners, they, the said William Gould and David Banks, on the day and year aforesaid, were proprietors of a certain book entitled "Reports of Cases argued and determined in the supreme court, and in the court for the trial of impeachments and the correction of errors of the State of New York. By Esek. Cowan, Counsellor at Law, vol. II.;" and being such proprietors of the said book, they, the said William Gould and David Banks did, on the day and year aforesaid, deposit a printed copy of the title of the said book in the clerk's office of the district court of the United States, for the southern district of New York, in the second circuit; and the clerk of the said district court did forthwith, on the day and year aforesaid, record the said copy of the title of the said book in a book kept by him for that purpose; and the said William Gould and David Banks did, within two months from the date of the record of the said title, cause a copy of the said record to be published, for the space of four weeks, in one of the newspapers printed in the United States, and did, forthwith, print and publish a large edition of the said book, to wit, three thousand copies; and in each of the copies of the said book, so published as aforesaid, caused the copy of the said record of the said title of the said book, so made by the said clerk as aforesaid, to be inserted at full length in the page immediately following the title of such book, and within six months after the publishing of the said book, to wit, on the fifteenth day of December, in the year of our Lord one thousand eight hundred and twenty-four, did deliver to the Secretary of State of the United States of America a copy of the said book to be preserved in his office. By means of which said several premises, and the statutes in such cases made and provided, the said William Gould and David Banks obtained the copy right of the said book, and the sole right and liberty of printing, reprinting, publishing, and vending the same for the term of twenty-eight years from the time of the recording of the title thereof in the said clerk's office as aforesaid, to wit, from the said sixth day of October, in the year of our Lord one thousand eight hundred and twenty-four aforesaid. Nevertheless, the said Eleazer F. Backus, the defendant in this cause, well knowing the premises, but not regarding the statutes in such cases made and provided, and contriving, and wrongfully and injuriously intending, to injure the said William Gould and David Banks, and to deprive them of the profits, emoluments, and advantages, which they might and otherwise would have derived and acquired from the sale of the said book; and also to deprive them of the benefit of their said copy right, on the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and thirty-eight, and on divers other days and times between that day and the day of the commencement of this suit, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States of America, for the said northern district, wrongfully and injuriously, without the consent of the said William Gould and David Banks, or of either of them, against the form of the statute in such case made and provided, and contrary to the true intent and meaning thereof, did publish, expose to sale, and sell, divers, to wit, one thousand copies of a certain other book or work, entitled "A Digest of the cases decided and reported in the superior court of the city of New York, the vice chancellor's court, the supreme court of judicature, the court of chancery, and the court for the correction of errors of the State of New York, from 1823 to Oct., 1836; with tables of the names of the cases, and of titles and references; being a Supplement to Johnson's Digest." A great part of which said last mentioned book or work, to wit, seven sheets thereof, had, before that time, been wrongfully and injuriously, and with the knowledge of the said Eleazer F. Backus, copied from the said book of the said William Gould and David Banks in this count first above mentioned, without the consent of the said William Gould and David Banks, or of either of them, and against the form of the statute in such case made and provided; which said one thousand copies of the said book or work, so published by the said Eleazer F. Backus, contained in the whole seven thousand sheets of the said book of the said William Gould and David Banks, in this count first above mentioned. By means of which said several premises, and by force of the statute in such case made and provided, an action hath accrued to the said William Gould and David Banks, who sue in this behalf, as well for the United States as for themselves, to demand and have of the said Eleazer F. Backus the sum of fifty cents for every sheet so published, exposed to sale, and sold by him, amounting, in the whole, to the sum of three thousand five hundred dollars, part of the said sum of fifty thousand dollars above demanded.

And, also, for that whereas the said William Gould and David Banks, on the twentieth day of April, in the year of our Lord one thousand eight hundred and twenty-five, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States for the said northern district, were and still are citizens of the United States, and on the day and year last aforesaid, and for a long time thereafter, were partners in the business of book selling, conducting the same in the city of New York, in the southern district of New York, under the name, style, and firm of "Gould and Banks," they, the said plaintiffs, then and still residing in the city of New York, in the said southern district of New York, and being such partners, they, the said William Gould and David Banks, on the day and year aforesaid, were proprietors of a certain book, entitled "Reports of cases argued and determined in the Supreme Court, and in the court for the trial of impeachments, and the correction of errors of the State of New York; by Esek. Cowen, counsellor at law, vol. III;" and being such proprietors of the said book, they, the said William Gould and David Banks, did, on the day and year aforesaid, deposit a printed copy of the title of the said book in the clerk's office of the district court of the United States, for the southern district of New York, in the second circuit, and the clerk of the said district court did forthwith, on the day and year aforesaid, record the said copy of the title of the said book in a book kept by him for that purpose; and the said William Gould and David Banks did, within two months from the date of the record of the said title, cause a copy of the said record to be published, for the space of four weeks, in one of the newspapers printed in the United States; and did forthwith print and publish a large edition of the said book, to wit, three thousand copies, and in each of the copies of the said book, so published as aforesaid, caused the copy of the said record of the said title of the said book, so made by the said clerk as aforesaid, to be inserted at full length in the page immediately following the title of such book; and within six months after the publishing of the said book, to wit, on the third day of June, in the year of our Lord one thousand eight hundred and twenty-five, did deliver to the Secretary of State of the United States of America, a copy of the said book, to be preserved in his office; by means of which said several premises and the statutes in such cases made and provided, the said William Gould and David Banks obtained the copy-right of the said book, and the sole right and liberty of printing, reprinting, publishing, and vending the same, for the term of twenty-eight years from the time of the recording of the title thereof in the said clerk's office as aforesaid, to wit, from the said twentieth day of April, in the year of our Lord one thousand eight hundred and twenty-five aforesaid. Nevertheless, the said Eleazer F. Backus, the defendant in this cause, well knowing the premises, but not regarding the statutes in such cases made and provided, and contriving, and wrongfully and injuriously intending, to injure the said William Gould and David Banks, and to deprive them of the profits, emoluments, and advantages, which they might, and otherwise would, have derived and acquired from the sale of the said book, and also to deprive them of the benefit of their said copy-right on the twenty fourth day of May, in the year of our Lord one thousand eight hundred and thirty-eight, and on divers other days and times between that day and the day of the commencement of this suit, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States of America for the said northern district, wrongfully and injuriously, without the consent of the said William Gould and David Banks, or of either of them, against the form of the statute in such case made and provided, and contrary to the true intent and meaning thereof, did publish, expose to sale, and sell, divers, to wit, one thousand copies of a certain other book or work, entitled "A digest of the cases decided and reported in the superior court of the city of New York, the vice chancellor's court, the supreme court of judicature, the court of chancery, and the court for the correction of errors of the State of New York, from 1823 to Oct., 1836; with tables of the names of the cases, and of titles and references; being a supplement to Johnson's Digest." A great part of which said last mentioned book or work, to wit, seven sheets thereof, had before that time been wrongfully and injuriously, and with the knowledge of the said Eleazer F. Backus, copied from the said book of the said William Gould and David Banks in this count first above mentioned, without the consent of the said William Gould and David Banks, or of either of them, and against the form of the statute in such case made and provided; which said one thousand copies of the said book or work, so published by the said Eleazer F. Backus, contained in the whole seven thousand sheets of the said book of the said William Gould and David Banks in this count first above mentioned. By means of which said several premises, and by force of the statute in such case made and provided, an action hath accrued to the said William Gould and David Banks, who sue in this behalf as well for the United States as for themselves, to demand and have of the said Eleazer F. Backus the sum of fifty cents for every sheet so published, exposed to sale, and sold by him, amounting in the whole to the sum of three thousand five hundred dollars, part of the said sum of fifty thousand dollars above demanded.

And, also, for that whereas the said William Gould and David Banks on the fifth day of December, in the year of our Lord one thousand eight hundred and twenty-five, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States for the said northern district, were, and still are, citizens of the United States, and on the day and year last aforesaid, and for a long time thereafter, were partners in the business of book selling, conducting the same in the city of New York, in the southern district of New York, under the name, style, and firm of "Gould and Banks," they, the said plaintiffs, then and still residing in the city of New York, in the said southern district of New York, and being such partners, they, the said William Gould and David Banks, on the day and year aforesaid, were proprietors of a certain book, entitled "Reports of cases argued and determined in the Supreme Court, and in the court for the trial of impeachments, and the correction of errors of the State of New York; by Esek Cowen, counsellor at law, vol. IV;" and being such proprietors of the said book, they, the said William Gould and David Banks, did, on the day and year aforesaid, deposit a printed copy of the title of the said book in the clerk's office of the district court of the United States for the southern district of New York, in the second circuit, and the clerk of the said district court did, forthwith, on the day and year aforesaid, record the said copy of the title of the said book in a book kept by him for that purpose; and the said William Gould and David Banks did, within two months from the date of the record of the said title, cause a copy of the said record to be published for the space of four weeks in one of the newspapers printed in the United States, and did forthwith print and publish a large edition of the said book, to wit, three thousand copies, and in each of the copies of the said book, so published as aforesaid, caused the copy of the said record of the said title of the said book, so made by the said clerk as aforesaid, to be inserted at full length in the page immediately following the title of such book; and within six months after the publishing of the said book, to wit, on the fifth day of April, in the year of our Lord one thousand eight hundred and twenty-six, did deliver to the Secretary of State of the United States of America, a copy of the said book, to be preserved in his office. By means of which said several premises, and the statutes in such cases made and provided, the said William Gould and David Banks obtained the copy-right of the said book, and the sole right and liberty of printing, reprinting, publishing, and vending the same, for the term of twenty-eight years from the time of the recording of the title thereof, in the said clerk's office as aforesaid, to wit, from the said fifth day of December, in the year of our Lord one thousand eight hundred and twenty-five aforesaid.

Nevertheless, the said Eleazer F. Backus, the defendant in this cause, well knowing the premises, but not regarding the statutes in such cases made and provided, and contriving, and wrongfully and injuriously intending, to injure the said William Gould and David Banks, and to deprive them of the profits, emoluments, and advantages which they might and otherwise would have derived and acquired from the sale of the said book, and also to deprive them of the benefit of their said copyright, on the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and thirty-eight, and on divers other days and times between that day and the day of the commencement of this suit, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States of America, for the said northern district, wrongfully and injuriously, without the consent of the said William Gould and David Banks, or either of them, against the form of the statute in such case made and provided, and contrary to the true intent and meaning thereof, did publish, expose to sale, and sell, divers, to wit, one thousand copies of a certain other book or work, entitled "A Digest of the Cases decided and reported in the Superior Court of the city of New York, the Vice Chancellor's Court, the Supreme Court of Judicature, the Court of Chancery, and the Court for the Correction of Errors, of the State of New York, from 1823 to Oct., 1836; with tables of the names of the cases, and of titles and references, being a Supplement to Johnson's Digest;" a great part of which said last mentioned book or work, to wit, seven sheets thereof, had before that time been wrongfully and injuriously, and with the knowledge of the said Eleazer F. Backus, copied from the said book of the said William Gould and David Banks, in this count first above mentioned, without the consent of the said William Gould and David Banks, or of either of them, and against the form of the statute in such case made and provided; which said one thousand copies of the said book or work, so published by the said Eleazer F. Backus, contained, in the whole, seven thousand sheets of the said book of the said William Gould and David Banks, in this count first above mentioned; by means of which said several premises, and by force of the statute in such case made and provided, an action hath accrued to the said William Gould and David Banks, who sue in this behalf, as well for the United States as for themselves, to demand and have of the said Eleazer F. Backus the sum of fifty cents for every sheet so published, exposed to sale, and sold by him, amounting, in the whole, to the sum of three thousand five hundred dollars, part of the said sum of fifty thousand dollars above demanded.

And, also, for that whereas the said William Gould and David Banks, on the sixteenth day of November, in the year of our Lord one thousand eight hundred and twenty-six, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States, for the said northern district, were, and still are, citizens of the United States, and on the day and year last aforesaid, and for a long time thereafter, were partners in the business of bookselling, conducting the same in the city of New York, in the southern district of New York, under the name, style, and firm of "Gould and Banks," they, the said plaintiffs, then and still residing in the city of New York, in the said southern district of New York; and being such partners, they, the said William Gould and David Banks, on the day and year aforesaid, were proprietors of a certain book entitled "Reports of Cases, argued and determined in the Supreme Court, and in the Court for the Trial of Impeachments and the Correction of Errors, of the State of New York. By Esek. Cowen, Counsellor at Law. Vol. V.;" and being such proprietors of the said book, they, the said William Gould and David Banks, did, on the day and year aforesaid, deposit a printed copy of the title of the said book in the clerk's office of the district court of the United States, for the southern district of New York, in the second circuit, and the clerk of the said district court did forthwith, on the day and year aforesaid, record the said copy of the title of the said book in a book kept by him for that purpose; and the said William Gould and David Banks did, within two months from the date of the record of the said title, cause a copy of the said record to be published, for the space of four weeks, in one of the newspapers printed in the United States; and did forthwith print and publish a large edition of the said book, to wit, three thousand copies; and in each of the copies of the said book, so published as aforesaid, caused the copy of the said record of the said title of the said book, so made by the said clerk as aforesaid, to be inserted at full length in the page immediately following the title of such book; and within six months after the publishing of the said book, to wit, on the nineteenth day of December, in the year of our Lord one thousand eight hundred and twenty-six, did deliver to the Secretary of State of the United States of America, a copy of the said book, to be preserved in his office.

By means of which said several premises, and the statutes in such cases made and provided, the said William Gould and David Banks obtained the copy right of the said book; and the sole right and liberty of printing, reprinting, publishing, and vending the same for the term of 28 years from the time of the recording of the title thereof in the said clerk's office as aforesaid, to wit, from the said sixteenth day of November, in the year of our Lord one thousand eight hundred and twenty-six aforesaid.

Nevertheless, the said Eleazer F. Backus, the defendant in this cause, well knowing the premises, but not regarding the statutes in such cases made and provided, and contriving, and wrongfully and injuriously intending, to injure the said William Gould and David Banks, and to deprive them of the profits, emoluments, and advantages which they might, and otherwise would, have derived and acquired from the sale of the said book, and also to deprive them of the benefit of their said copy right, on the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and thirty-eight, and on divers other days and times between that day and the day of the commencement of this suit, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States of America, for the said northern district, wrongfully and injuriously, without the consent of the said William Gould and David Banks, or of either of them, against the form of the statute in such case made and provided, and contrary to the true intent and meaning thereof, did publish, expose to sale, and sell, divers, to wit, one thousand copies of a certain other book or work entitled "A Digest of the cases decided and reported in the Supreme Court of the city of New York, the Vice Chancellor's Court, the Supreme Court of Judicature, the Court of Chancery, and the Court for the Correction of Errors of the State of New York, from 1823 to Oct., 1836; with Tables of the names of the Cases, and of Titles and References, being a Supplement to Johnson's Digest." A great part of which said last mentioned book, or work, to wit, seven sheets thereof, had, before that time, been wrongfully and injuriously, and with the knowledge of the said Eleazer F. Backus, copied from the said book of the said William Gould and David Banks in this count first above mentioned, without the consent of the said William Gould and David Banks, or of either of them, and against the form of the statute in such case made and provided; which said one thousand copies of the said book, or work, so published by the said Eleazer F. Backus, contained in the whole seven thousand sheets of the said book of the said William Gould and David Banks in this count first above mentioned. By means of which said several premises, and by force of the statute in such case made and provided, an action hath accrued to the said William Gould and David Banks, who sue in this behalf, as well for the United States as for themselves, to demand and have of the said Eleazer F. Backus the sum of fifty cents for every sheet so published, exposed to sale, and sold by him, amounting in the whole to the sum of three thousand five hundred dollars, part of the said sum of fifty thousand dollars above demanded.

And, also, for that whereas the said William Gould and David Banks, on the 28th day of May, in the year of our Lord one thousand eight hundred and twenty-seven, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States, for the said northern district, were, and still are, citizens of the United States; and, on the day and year last aforesaid, and for a long time thereafter, were partners in the business of book selling, conducting the same in the city of New York, in the southern district of New York, under the name, style, and firm, of "Gould and Banks," they, the said plaintiffs, then and still residing in the city of New York, in the said southern district of New York; and, being such partners, they, the said William Gould and David Banks, on the day and year aforesaid, were proprietors of a certain book, entitled "Reports of Cases Argued and Determined in the Supreme Court, and in the Court for the Trial of Impeachments and the Correction of Errors, of the State of New York: by Esek. Cowen, counsellor at law, vol. VI.;" and being such proprietors of the said book, they, the said William Gould and David Banks, did, on the day and year aforesaid, deposit a printed copy of the title of the said book in the clerk's office of the district court of the United States, for the southern district of New York, in the second circuit; and the clerk of the said district court did forthwith, on the day and year aforesaid, record the said copy of the title of the said book in a book kept by him for that purpose; and the said William Gould and David Banks did, within two months from the date of the record of the said title, cause a copy of the said record to be published, for the space of four weeks, in one of the newspapers printed in the United States, and did forthwith print and publish a large edition of the said book, to wit, three thousand copies; and in each of the copies of the said book, so published as aforesaid, caused the copy of the said record of the said title of the said book, so made by the said clerk as aforesaid, to be inserted at full length in the page immediately following the title of such book; and within six months after the publishing of the said book, to wit, on the twenty-eighth day of September, in the year of our Lord one thousand eight hundred and twenty-seven, did deliver to the Secretary of State of the United States of America a copy of the said book, to be preserved in his office. By means of which said several premises, and the statutes in such cases made and provided, the said William Gould and David Banks obtained the copyright of the said book, and the sole right and liberty of printing, reprinting, publishing, and vending the same, for term of twenty-eight years from the time of the recording of the title thereof in the said clerk's office as aforesaid, to wit, from the said twenty-eighth day of May, in the year of our Lord one thousand eight hundred and twenty-seven aforesaid.

Nevertheless, the said Eleazer F. Backus, the defendant in this cause, well knowing the premises, but not regarding the statutes in such cases made and provided, and contriving, and wrongfully and injuriously intending to injure the said William Gould and David Banks, and to deprive them of the profits, emoluments, and advantages which they might and otherwise would have derived and acquired from the sale of the said book, and also to deprive them of the benefit of their said copyright, on the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and thirty-eight, and on divers other days and times between that day and the day of the commencement of this suit, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States of America, for the said northern district, wrongfully and injuriously, without the consent of the said William Gould and David Banks, or of either of them, against the form of the statute in such case made and provided, and contrary to the true intent and meaning thereof, did publish, expose to sale, and sell, divers, to wit: one thousand copies of a certain other book, or work, entitled "A Digest of the Cases Decided and Reported in the Supreme Court of the City of New York, the Vice Chancellor's Court, the Supreme Court of Judicature, the Court of Chancery, and the Court for the Correction of Errors, of the State of New York, from 1823 to Oct., 1836; with tables of the names of *of* the cases, and of titles and references; being a supplement to Johnson's Digest;" a great part of which said last mentioned book or work, to wit, seven sheets thereof, had before that time been wrongfully and injuriously, and with the knowledge of the said Eleazer F. Backus, copied from the said book of the said William Gould and David Banks, in this count first above mentioned, without the consent of *of* the said William Gould and David Banks, or of either of them, and against the form of the statute in such case made and provided; which said one thousand copies of the said book or work, so published by the said Eleazer F. Backus, contained, in the whole, seven thousand sheets of the said book of the said William Gould and David Banks in this count first above mentioned. By means of which said several premises, and by force of the statute in such case made and provided, an action hath accrued to the said William Gould and David Banks, who sue in this behalf as well for the United States as for themselves, to demand and have of the said Eleazer F. Backus the sum of fifty cents for every sheet so published, exposed to sale, and sold by him, amounting in the whole to the sum of three thousand five hundred dollars, part of the said sum of fifty thousand dollars above demanded.

And, also, for that whereas the said William Gould and David Banks, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and twenty-eight, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States for the said northern district, were and still are citizens of the United States, and on the day and year last aforesaid, and for a long time thereafter, were partners in the business of bookselling, conducting the same in the city of New York, in the southern district of New York, under the name, style, and firm of "Gould & Banks," they, the said plaintiffs, then and still residing in the city of New York, in the said southern district of New York, and being such partners, they, the said William Gould and David Banks, on the day and year aforesaid, were proprietors of a certain book, entitled "Reports of Cases Argued and Determined in the Supreme Court, and in the Court for the Trial of Impeachments and the Correction of Errors, of the State of New York: by Esek. Cowen, counsellor at law; vol VII.;" and being such proprietors of the said book, they, the said William Gould and David Banks did, on the day and year aforesaid, deposit a printed copy of the title of the said book in the clerk's office of the district court of the United States, for the southern district of New York, in the second circuit; and the clerk of the said district court did forthwith, on the day and year aforesaid, record the said copy of the title of the said book in a book kept by him for that purpose; and the said William Gould and David Banks did, within two months from the date of the record of the said title, cause a copy of the said record to be published, for the space of four weeks in one of the newspapers printed in the United States, and did forthwith print and publish a large edition of the said book, to wit, three thousand copies, and in each of the copies of the said book, so published as aforesaid, caused the copy of the said record of the said title of the said book, so made by the said clerk as aforesaid, to be inserted at full length in the page immediately following the title of such book; and within six months after the publishing of the said book, to wit, on the thirteenth day of April, in the year of our Lord one thousand eight hundred and twenty-eight, did deliver to the Secretary of State of the United States of America a copy of the said book, to be preserved in his office. By means of which said several premises, and the statutes in such cases made and provided, the said William Gould and David Banks obtained the copyright of the said book, and the sole right and liberty of printing, reprinting, publishing, and vending the same, for the term of twenty-eight years from the time of the recording of the title thereof, in the said clerk's office as aforesaid, to wit, from the said twenty-third day of January, in the year of our Lord one thousand eight hundred and twenty-eight aforesaid.

Nevertheless, the said Eleazer F. Backus, the defendant in this cause, well knowing the premises, but not regarding the statutes in such cases made and provided, and contriving, and wrongfully and injuriously intending, to injure the said William Gould and David Banks, and to deprive them of the profits, emoluments, and advantages which they might, and otherwise would have derived and acquired from the sale of the said book, and also to deprive them of the benefit of their said copyright, on the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and thirty-eight, and on divers other days and times between that day and the day of the commencement of this suit, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States of America for the said northern district, wrongfully and injuriously, without the consent of the said William Gould and David Banks, or of either of them, against the form of the statute in such case made and provided, and contrary to the true intent and meaning thereof, did publish, expose to sale, and sell, divers, to wit, one thousand copies of a certain other book or work, entitled "A digest of the cases decided and reported in the superior court of the city of New York, the vice chancellor's court, the supreme court of judicature, the court of chancery, and the court for the correction of errors of the State of New York, from 1823 to October, 1836; with tables of the names of the cases, and of titles and references; being a supplement to Johnson's digest." A great part of which said last mentioned book or work, to wit, seven sheets thereof, had before that time been wrongfully and injuriously, and with the knowledge of the said Eleazer F. Backus, copied from the said book of the said William Gould and David Banks, in this count first above mentioned, without the consent of the said William Gould and David Banks, or of either of them, and against the form of the statute in such case made and provided; which said one thousand copies of the said book or work so published by the said Eleazer F. Backus, contained, in *in* the whole, seven thousand sheets of the said book of the said William Gould and David Banks, in this count first above mentioned. By means of which said several premises, and by force of the statute in such case made and provided, an action hath accrued to the said William Gould and David Banks, who sue in this behalf, as well for the United States as for themselves, to demand and have of the said Eleazer F. Backus the sum of fifty cents for every sheet so published, exposed to sale, and sold by him, amounting, in the whole, to the sum of three thousand five hundred dollars, part of the said sum of fifty thousand dollars above demanded.

And, also, for that whereas the said William Gould and David Banks, on the twenty-first day of April, in the year of our Lord one thousand eight hundred and twenty-nine, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States for the said northern district, were, and still are, citizens of the United States; and on the day and year last aforesaid, and for a long time thereafter, were partners in the business of book selling, conducting the same in the city of New York, in the southern district of New York, under the name, style, and firm of "Gould & Banks;" they, the said plaintiffs, then and still residing in the city of New York, in the said southern district of New York; and being such partners, they, the said William Gould and David Banks, on the day and year aforesaid, were proprietors of a certain book, entitled "Reports of cases argued and determined in the supreme court, and in the court for the trial of impeachments and the correction of errors of the State of New York; by Ezek. Cowen, counsellor at law, vol. VIII;" and being such proprietors of the said book, they, the said William Gould and David Banks, did, on the day and year aforesaid, deposit a printed copy of the title of the said book in the clerk's office of the district court of the United States for the southern district of New York, in the second circuit; and the clerk of the said district court did forthwith, on the day and year aforesaid, record the said copy of the title of the said book in a book kept by him for that purpose; and the said Wm. Gould and David Banks did, within two months from the date of the record of the said title, cause a copy of the said record to be published, for the space of four weeks, in one of the newspapers printed in the United States, and did forthwith print and publish a large edition of the said book, to wit, three thousand copies; and in each of the copies of the said book, so published as aforesaid, caused the copy of the said record of the said title of the said book, so made by the said clerk as aforesaid, to be inserted at full length in the page immediately following the title of such book; and within six months after the publishing of the said book, to wit, on the twenty-first day of May, in the year of our Lord one thousand eight hundred and twenty-nine, did deliver to the Secretary of State of the United States of America a copy of the said book, to be deposited in his office. By means of which said several premises, and the statutes in such cases made and provided, the said William Gould and David Banks obtained the copyright of the said book, and the sole right and liberty of printing, reprinting, publishing, and vending the same for the term of twenty-eight years, from the time of the recording of the title thereof in the said clerk's office as aforesaid, to wit, from the said twenty-first day of April, in the year of our Lord one thousand eight hundred and twenty-nine aforesaid.

Nevertheless, the said Eleazer F. Backus, the defendant in this cause, well knowing the premises, but not regarding the statutes in such cases made and provided, and contriving, and wrongfully and injuriously intending, to injure the said William Gould and David Banks, and to deprive them of the profits, emoluments, and advantages which they might and otherwise would have derived and acquired from the sale of the said book, and also to deprive them of the benefit of their said copy-right, on the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and thirty-eight, and on divers other days and times between that day and the day of the commencement of this suit, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States of America, for the said northern district, wrongfully and injuriously, without the consent of the said William Gould and David Banks, or of either of them, against the form of the statute in such case made and provided, and contrary to the true intent and meaning thereof, did publish, expose to sale, and sell, divers, to wit, one thousand copies of a certain other book or work, entitled "A Digest of the

Cases decided and reported in the Superior Court of the city of New York, the Vice Chancellor's Court, the Supreme Court of Judicature, the Court of Chancery, and the Court for the Correction of Errors, of the State of New York, from 1823 to Oct., 1836; with tables of the names of the cases and of titles and references; being a supplement to Johnson's Digest;" a great part of which said last mentioned book or work, to wit, seven sheets thereof, had before that time been wrongfully and injuriously, and with the knowledge of the said Eleazer F. Backus, copied from the said book of the said William Gould and David Banks, in this count first above mentioned, without the consent of the said William Gould and David Banks, or of either of them, and against the form of the statute in such case made and provided; which said one thousand copies of the said book or work, so published by the said Eleazer F. Backus, contained, in the whole, seven thousand sheets of the said book of the said William Gould and David Banks, in this court just above mentioned. By means of which said several premises, and by force of the statute in such case made and provided, an action hath accrued to the said William Gould and David Banks, who sue in this behalf, as well for the United States as for themselves, to demand and have of the said Eleazer F. Backus, the sum of fifty cents for every sheet so published, exposed to sale, and sold by him, amounting, in the whole, to the sum of three thousand five hundred dollars, part of the said sum of fifty thousand dollars above demanded.

And, also, for that whereas the said William Gould and David Banks, on the thirteenth day of November, in the year of our Lord one thousand eight hundred and twenty-nine, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States, for the said northern district, were and still are citizens of the United States, and on the day and year last aforesaid, and for a long time thereafter, were partners in the business of bookselling, conducting the same in the city of New York, in the southern district of New York, under the name, style, and firm of "Gould and Banks;" they, the said plaintiffs, then and still residing in the city of New York, in the said southern district of New York, and being such partners, they, the said William Gould and David Banks, on the day and year aforesaid, were proprietors of a certain book, entitled "Reports of Cases argued and determined in the Supreme Court, and in the Court for the Trial of Impeachments, and the Correction of Errors, of the State of New York. By Esek Cowen, Counsellor at Law. Vol. IX;" and being such proprietors of the said book, they, the said William Gould and David Banks did, on the day and year aforesaid, deposit a printed copy of the title of the said book in the clerk's office of the district court of the United States, for the southern district of New York, in the second circuit; and the clerk of the said district court did, forthwith, on the day and year aforesaid, record the said copy of the title of the said book in a book kept by him for that purpose; and the said William Gould and David Banks did, within two months from the date of the record of the said title, cause a copy of the said record to be published, for the space of four weeks, in one of the newspapers printed in the United States, and did forthwith print and publish a large edition of the said book, to wit, three thousand copies, and in each of the copies of the said book, so published as aforesaid, caused the copy of the said record of the said title of the said book, so made by the said clerk as aforesaid, to be inserted at full length in the page immediately following the title of such book; and within six months after the publishing of the said book, to wit, on the twentieth day of January, in the year of our Lord one thousand eight hundred and thirty, did deliver to the Secretary of State of the United States of America, a copy of the said book, to be preserved in his office. By means of which said several premises, and the statutes in such cases made and provided, the said William Gould and David Banks obtained the copy-right of the said book, and the sole right and liberty of printing, reprinting, publishing, and vending the same for the term of twenty-eight years from the time of the recording of the title thereof in the said clerk's office as aforesaid, to wit, from the thirteenth day of November, in the year of our Lord one thousand eight hundred and twenty-nine aforesaid.

Nevertheless, the said Eleazer F. Backus, the defendant in this cause, well knowing the premises, but not regarding the statutes in such cases made and provided, and contriving, and wrongfully and injuriously intending, to injure the said William Gould and David Banks, and to deprive them of the profits, emoluments, and advantages which they might and otherwise would have derived and acquired from the sale of the said book, and also to deprive them of the benefit of their said copyright, on the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and thirty-eight, and on divers other days and times between that day and the day of the commencement of this suit, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States of America, for the said northern district, wrongfully and injuriously, without the consent of the said William Gould and David Banks, or of either of them, against the form of the statute in such case made and provided, and contrary to the true intent and meaning thereof, did publish, expose to sale, and sell, divers, to wit, one thousand, copies of a certain other book or work, entitled "A Digest of the Cases decided and reported in the Superior Court of the city of New York, the Vice Chancellor's Court, the Supreme Court of Judicature, the Court of Chancery, and the Court for the Correction of Errors, of the State of New York, from 1823 to Oct., 1836; with tables of the names of the cases, and of titles and references; being a Supplement to Johnson's Digest;" a great part of which said last mentioned book or work, to wit, seven sheets thereof, had before that time been wrongfully and injuriously, and with the knowledge of the said Eleazer F. Backus, copied from the said book of the said William Gould and David Banks, in this count first above mentioned, without the consent of the said William Gould and David Banks, or of either of them, and against the form of the statute in such case made and provided; which said one thousand copies of the said book or work, so published by the said Eleazer F. Backus, contained, in the whole, seven thousand sheets of the said book of the said William Gould and David Banks, in this count first above mentioned.

By means of which said several premises, and by force of the statute in such case made and provided, an action hath accrued to the said William Gould and David Banks, who sue in this behalf, as well for the United States as for themselves, to demand and have of the said Eleazer F. Backus the sum of fifty cents for every sheet so published, exposed to sale, and sold by him, amounting, in the whole, to the sum of three thousand five hundred dollars, part of the said sum of fifty thousand dollars above demanded.

And, also, for that whereas the said William Gould and David Banks, on the second day of February, in the year of our Lord one thousand eight hundred and twenty-nine, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States for the said northern district, were, and still are, citizens of the United States, and on the day and year last aforesaid, and for a long time thereafter, were partners in the business of book-selling, conducting the same in the city of New York, in the southern district of New York, under the name, style, and firm of "Gould and Banks," they, the said plaintiffs, then and still residing in the city of New York, in the said southern district of New York; and being such partners, they, the said William Gould and David Banks, on the day and year aforesaid, were proprietors of a certain book entitled "Reports of Cases Argued and Determined in the Supreme Court of Judicature, and in the Court for the Trial of Impeachments and the Correction of Errors of the State of New York." By John L. Wendell, counsellor-at-law, vol. I. And being such proprietors of the said book, they, the said William Gould and David Banks, did, on the day and year aforesaid, deposit a printed copy of the title of the said book in the clerk's office of the district court of the United States, for the southern district of New York, in the second circuit; and the clerk of the said district court did, forthwith, on the day and year aforesaid, record the said copy of the title of the said book in a book kept by him for that purpose; and the said William Gould and David Banks did, within two months from the date of the record of the said title, cause a copy of the said record to be published, for the space of four weeks, in one of the newspapers printed in the United States, and did forthwith print and publish a large edition of the said book, to wit, three thousand copies, and in each of the copies of the said book, so published as aforesaid, caused the copy of the said record of the said title of the said book, so made by the said clerk as aforesaid, to be inserted at full length in the page immediately following the title of such book; and within six months after the publishing of the said book, to wit, on the thirtieth day of April, in the year of our Lord one thousand eight hundred and twenty-nine, did deliver to the Secretary of State of the United States of America, a copy of the said book, to be preserved in his office. By means of which said several premises, and the statutes in such cases made and provided, the said William Gould and David Banks obtained the copyright of the said book, and sole right and liberty of printing, reprinting, publishing, and vending the same, for the term of twenty-eight years from the time of the recording of the title thereof in the said clerk's office as aforesaid, to wit, from the said second day of February, in the year of our Lord one thousand eight hundred and twenty-nine aforesaid.

Nevertheless, the said Eleazer F. Backus, the defendant in this cause, well knowing the premises, but not regarding the statutes in such cases made and provided, and contriving, and wrongfully and injuriously intending, to injure the said William Gould and David Banks, and to deprive them of the profits, emoluments, and advantages which they might, and otherwise would, have derived and acquired from the sale of the said book, and also to deprive them of the benefit of their said copyright, on the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and thirty-eight, and on divers other days and times between that day and the day of the commencement of this suit, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States of America for the said northern district, wrongfully and injuriously, without the consent of the said William Gould and David Banks, or of either of them, against the form of the statute in such case made and provided, and contrary to the true intent and meaning thereof, did publish, expose to sale, and sell, divers, to wit, one thousand copies of a certain other book or work entitled "A Digest of the Cases Decided and Reported in the Superior Court of the City of New York, the Vice Chancellor's Court, the Supreme court of Judicature, the Court of Chancery, and the Court for the Correction of Errors, of the State of New York, from 1823 to Oct., 1836, with Tables of the Names of the Cases and of Titles and References, being a Supplement to Johnson's Digest."

A great part of which said last mentioned book or work, to wit, seven sheets thereof, had, before that time, been wrongfully and injuriously, and with the knowledge of the said Eleazer F. Backus copied from the said book of the said William Gould and David Banks, in this count first above mentioned, without the consent of the said William Gould and David Banks, or of either of them, and against the form of the statute in such case made and provided; which said one thousand copies of the said book or work, so published by the said Eleazer F. Backus, contained in the whole seven thousand sheets of the said book of the said William Gould and David Banks, in this count first above mentioned. By means of which said several premises, and by force of the statute in such case made and provided, an action hath accrued to the said William Gould and David Banks, who sue in this behalf as well for the United States as for themselves, to demand and have of the said Eleazer F. Backus the sum of fifty cents for every sheet so published, exposed to sale, and sold by him, amounting in the whole to the sum of three thousand five hundred dollars, part of the said sum of fifty thousand dollars above demanded.

And, also, for that whereas the said William Gould and David Banks, on the fifth day of September, in the year of our Lord one thousand eight hundred and twenty-nine, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States for the said northern district, were and still are citizens of the United States; and on the day and year last aforesaid, and for a long time thereafter, were partners in the business of bookselling, conducting the same in the city of New York, in the southern district of New York, under the name, style, and firm of "Gould and Banks;" they, the said plaintiffs, then and still residing in the city of New York, in the said southern district of New York; and being such partners, they, the said William Gould and David Banks, on the day and year aforesaid, were proprietors of a certain book entitled "Reports of Cases argued and determined in the Supreme Court of Judicature, and in the Court for the Trial of Impeachments and the Correction of Errors of the State of New York. By John L. Wendell, Counsellor at Law. Vol. II." and being such proprietors of the said book, they, the said William Gould and David Banks, did, on the day and year aforesaid, deposit a printed copy of the title of the said book, in the clerk's office of the district court of the United States, for the southern district of New York, in the second circuit; and the clerk of the said district court did forthwith, on the day and year aforesaid, record the said copy of the title of the said book in a book kept by him for that purpose; and the said William Gould and David Banks did, within two months from the date of the record of the said title, cause a copy of the said record to be published, for the space of four weeks, in one of the newspapers printed in the United States; and did forthwith print and publish a large edition of the said book, to wit, three thousand copies; and in each of the copies of the said book, so published as aforesaid, caused the copy of the said record of the said title of the said book, so made by the said clerk as aforesaid, to be inserted at full length in the page immediately following the title of such book; and within six months after the publishing of the said book, to wit, on the nineteenth day of October, in the year of our Lord one thousand eight hundred and twenty-nine, did deliver to the Secretary of State of the United States of America a copy of the said book, to be preserved in his office. By means of which said several premises, and the statutes in such cases made and provided, the said William Gould and David Banks obtained the copy right of the said book, and the sole right and liberty of printing, reprinting, publishing, and vending the same for the term of twenty-eight years, from the time of the recording of the title thereof in the said clerk's office as aforesaid, to wit, from the said fifth day of September, in the year of our Lord one thousand eight hundred and twenty-nine aforesaid. Nevertheless, the said Eleazer F. Backus, the defendant in this cause, well knowing the premises, but not regarding the statutes in such cases made and provided, and contriving, and wrongfully and injuriously intending, to injure the said William Gould and David Banks, and to deprive them of the profits, emoluments, and advantages which they might, and otherwise would, have derived and acquired from the sale of the said book, and also to deprive them of the benefit of their said copy right, on the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and thirty-eight, and on divers other days and times between that day and the day of the commencement of this suit, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States of America, for the said northern district, wrongfully and injuriously, without the consent of the said William Gould and David Banks, or of either of them, against the form of the statute in such case made and provided, and contrary to the true intent and meaning thereof, did publish, expose to sale, and sell, divers, to wit, one thousand copies of a certain other book, or work, entitled " A Digest of the Cases decided and reported in the superior court of the city of New York, the Vice Chancellor's Court, the Supreme Court of Judicature, the Court of Chancery, and the Court for the Correction of Errors of the State of New York, from 1823 to Oct., 1836; with Tables of the names of the Cases, and of Titles and References; being a Supplement to Johnson's Digest."

A great part of which said last mentioned book, or work, to wit, seven sheets thereof, had, before that time, been wrongfully and injuriously, and with the knowledge of the said Eleazer F. Backus, copied from the said book of the said William Gould and David Banks, in this count first above mentioned, without the consent of the said William Gould and David Banks, or of either of them, and against the form of the statute in such case made and provided; which said one thousand copies of the said book, or work, so published by the said Eleazer F. Backus, contained in the whole seven thousand sheets of the said book of the said William Gould and David Banks in this count first above mentioned. By means of which said several premises, and by force of the statute in such case made and provided, an action hath accrued to the said William Gould and David Banks, who sue in this behalf as well for the United States as for themselves, to demand and have of the said Eleazer F. Backus the sum of fifty cents for every sheet so published, exposed to sale, and sold by him, amounting, in the whole, to the sum of three thousand five hundred dollars, part of the said sum of fifty thousand dollars above demanded.

And, also, for that whereas the said William Gould and David Banks, on the seventh day of April, in the year of our Lord one thousand eight hundred and thirty, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States, for the said northern district, were and still are citizens of the United States, and on the day and year last aforesaid, and for a long time thereafter, were partners in the business of bookselling, conducting the same in the city of New York, in the southern district of New York, under the name, style, and firm of "Gould & Banks," they, the said plaintiffs, then and still residing in the city of New York, in the said southern district of New York; and being such partners, they, *they* the said William Gould and David Banks, on the day and year aforesaid, were proprietors of a certain book, entitled "Reports of Cases Argued and Determined in the Supreme Court of Judicature, and in the Court for the Trial of Impeachments and the Correction of Errors of the State of New York: by John L. Wendell, counsellor at law; vol. III.;" and being such proprietors of the said book, they, the said William Gould and David Banks, did, on the day and year aforesaid, deposit a printed copy of the title of the said book in the clerk's office of the district court of the United States for the southern district of New York, in the second circuit; and the clerk of the said district court did forthwith, on the day and year aforesaid, record the said copy of the title of the said book in a book kept by him for that purpose; and the said William Gould and David Banks did, within two months from the date of the record of the said title, cause a copy of the said record to be published, for the space of four weeks, in one of the newspapers printed in the United States, and did forthwith print and publish a large edition of the said book, to wit, three thousand copies, and in each of the copies of the said book, so published as aforesaid, caused the copy of the said record of the said title of the said book, so made by the said clerk as aforesaid, to be inserted at full length in the page immediately following the title of such book; and within six months after the publishing of the said book, to wit, on the eighteenth day of May, in the year of our Lord one thousand eight hundred and thirty, did deliver to the Secretary of State of the United States of America a copy of the said book, to be preserved in his office. By means of which said several premises, and the statutes in such cases made and provided, the said William Gould and David Banks obtained the copyright of the said book, and the sole right and liberty of printing, reprinting, publishing, and vending the same, for the term of twenty-eight years from the time of the recording of the title thereof in the said clerk's office as aforesaid, to wit, from the said seventh day of April, in the year of our Lord one thousand eight hundred and thirty aforesaid. Nevertheless, the said Eleazer F. Backus, the defendant in this cause, well knowing the premises, but not regarding the statutes in such cases made and provided, and contriving, and wrongfully and injuriously intending, to injure the said William Gould and David Banks, and to deprive them of the profits, emoluments, and advantages which they might, and otherwise would, have derived and acquired from the sale of the said book, and also to deprive them of the benefit of their said copyright, on the twenty-fourth day of May, in the year of our Lord one thousand eight hundred and thirty-eight, and on divers other days and times between that day and the day of the commencement of this suit, at the city of Albany, in the county of Albany, in the northern district of New York, and within the jurisdiction of the circuit court of the United States of America, for the said northern district, wrongfully and injuriously, without the consent of the said William Gould and David Banks, or of either of them, against the form of the statute in such case made and provided, and contrary to the true intent and meaning thereof, did publish, expose to sale, and sell, divers, to wit, one thousand copies of a certain other book or work, entitled "A Digest of the Cases Decided and Reported in the Supreme Court of the City of New York, the Vice Chancellor's Court, the Supreme Court of Judicature, the Court of Chancery, and the Court for the Correction of Errors, of the State of New York, from 1823 to Oct., 1836; with Tables of the Names of the Cases, and of Titles and References: being a Supplement to Johnson's Digest;" a great part of which said last mentioned book or work, to wit, twenty-three sheets thereof, had before that time been wrongfully and injuriously, and with the knowledge of the said Eleazer F. Backus, copied from the said book of the said William Gould and David Banks in this count first above mentioned, without the consent of the said William Gould and David Banks, or of either of them, and against the form of the statute in such case made and provided; which said one thousand copies of the said book or work, so published by the said Eleazer F. Backus, contained, in the whole, twenty-three thousand sheets of the said book of the said William Gould and David Banks in this count first above mentioned. By means of which said several premises, and by force of the statute in such case made and provided, an action hath accrued to the said William Gould and David Banks, who sue, in this behalf, as well for the United States as for themselves, to demand and have of the said Eleazer F. Backus the sum of fifty cents for every sheet so published, exposed to sale, and sold by him, amounting in the whole to the sum of eleven thousand five hundred dollars, the residue of the said sum of fifty thousand dollars above demanded. Yet the said Eleazer F. Backus, altho' often requested so to do, hath not as yet paid the said sum of fifty thousand dollars above demanded, or any part thereof, to the United States and to the said William Gould and David Banks, who sue as aforesaid, or to the said United States, or to the said William Gould and David Banks, or to either of them, but hath hitherto wholly neglected and refused so to do; and therefore, as well for the United States as for themselves, in this behalf, the said William Gould and David Banks bring this suit, &c.

And now at this day, that is to say, on Tuesday, next after the third Monday of June in this same term, until which day the said Eleazer F. Backus had leave to imparle to the said bill, and then to answer the same before the judges of the said court, at Canandaigua, in the county of Ontario, come as well the said William Gould and David Banks, in their proper persons, as the said Eleazer F. Backus, by Samuel Cheever, his attorney; and the said Eleazer F. Backus defends the wrong and injury, when, &c., and says that he does not owe to the United States of America, and to the said William Gould and David Banks, who sue as aforesaid, or to either of them, the said sum of money above demanded, or any part thereof, in manner and form as the said William Gould and David Banks, who sue as aforesaid, have above thereof complained against him, and of this he puts himself upon the country; and the said William Gould and David Banks, who sue as aforesaid, do the like, &c.

Therefore, let a jury thereupon come before the judges of the said court, at Albany, on the third Tuesday of October next, twelve, &c., each of whom, &c., by whom, &c., and who neither, &c., to recognise, &c., because as well, &c.; the same day is given to the parties aforesaid at the same place.

At which day, before the judges of the said court, at Albany aforesaid, come the parties aforesaid, that is to say, the said William Gould and David Banks, in their proper persons, and the said Eleazer F. Backus, by his attorney aforesaid; and the marshal of the said court did not return the said writ, nor did he do any thing thereupon; nor was the said cause tried at the said term of the said court. And hereupon the process aforesaid, between the parties aforesaid, in the plea aforesaid, is continued, before the said judges of the said court, until the third Tuesday of October, in the year of our Lord one thousand eight hundred and forty-three, at Albany aforesaid. The same day is given to the parties aforesaid at the same place.

At which day, before the said judges of the said court, at Albany aforesaid, come the parties aforesaid, that is to say, as well the said William Gould and David Banks, in their proper persons, as the said Eleazer F. Backus, by his attorney aforesaid; and the jurors of the jury, whereof mention is before made, being chosen, tried, and sworn, say, upon their oath, that as to five hundred and eighty dollars and eighty cents, part of the sum of three thousand and five hundred dollars in the first count of the said bill or declaration mentioned, and parcel of the sum of fifty thousand dollars above demanded, the said Eleazer F. Backus doth owe the said sum of five hundred and eighty dollars and eighty cents to the United States of America, and the said William Gould and David Banks, who sue as aforesaid, in manner and form as the said William Gould and David Banks, who sue as aforesaid, have within complained against him; and as to four hundred and twenty-one dollars and eight cents, part of the sum of three thousand and five hundred dollars in the second count of the said bill or declaration mentioned, and parcel of the said sum of fifty thousand dollars above demanded, the jurors aforesaid, upon their oath aforesaid, do further say, that the said Eleazer F. Backus doth owe the said sum of four hundred and twenty-one dollars and eight cents to the United States of America, and the said William Gould and David Banks, who sue as aforesaid, in manner and form as the said William Gould and David Banks, who sue as aforesaid, have within complained against him; and as to seven hundred and eighty-six dollars and seventy-three cents, part of the sum of three thousand and five hundred dollars, in the fifth count of the said bill or declaration mentioned, parcel of the said sum of fifty thousand dollars above demanded; the jurors aforesaid, upon their oath aforesaid, do further say, that the said Eleazer F. Backus doth owe the said sum of seven hundred and eighty-six dollars and seventy-three cents to the United States of America, and the said William Gould and

David Banks, who sue as aforesaid, in manner and form as the said William Gould and David Banks, who sue as aforesaid, have within complained against him; and as to two hundred and eighty-one dollars and fourteen cents, part of the sum of three thousand and five hundred dollars, in the eleventh count of the said bill or declaration mentioned, and parcel of the said sum of fifty thousand dollars above demanded, the jurors aforesaid, upon their oath aforesaid, do further say, that the said Eleazer F. Backus doth owe the said sum of two hundred and eighty-one dollars and fourteen cents to the United States of America, and the said William Gould and David Banks, who sue as aforesaid, in manner and form as the said William Gould and David Banks, who sue as aforesaid, have within complained against him; and they assess the costs and charges of the said William Gould and David Banks, who sue as aforesaid, by them about their suit in this behalf expended, to six cents; and as to the residue of the said sum of fifty thousand dollars in the said first, second, fifth, eleventh, and other counts of the said declaration mentioned, the jurors aforesaid, upon their oath aforesaid, say, that the Eleazer F. Backus doth not owe the same, or any part thereof, to the United States of America, and the said William Gould and David Banks, who sue as aforesaid, as the said Eleazer F. Backus hath within in that behalf alleged.

Therefore, it is considered that the said William Gould and David Banks, who sue as aforesaid, do recover against the said Eleazer F. Backus, for themselves and the United States of America, the said several sums of five hundred and eighty dollars and eighty cents; four hundred and twenty-one dollars and eight cents; seven hundred and eighty-six dollars and seventy-three cents; and two hundred and eighty-one dollars and fourteen cents, by the jurors aforesaid, in form aforesaid, found to be owing by the said Eleazer F. Backus to the United States of America, and the said William Gould and David Banks, who sue as aforesaid; which said several sums amount together to the sum of two thousand and sixty-nine dollars and seventy-five cents, and are parcel of the said sum of fifty thousand dollars above demanded; and that the said William Gould and David Banks, who sue as aforesaid, have one moiety thereof to their own use, and that the United States of America have the other moiety thereof to their own use, according to the form of the statute in such case made and provided. And also that the said William Gould and David Banks, who sue as aforesaid, do recover against the said Eleazer F. Backus one hundred and eleven dollars and forty-nine cents, for their said costs and charges by the said judges of the said court now here adjudged of increase to the said William Gould and David Banks, who sue as aforesaid; which said costs and charges, in the whole, amount to one hundred and eleven dollars and fifty-five cents. And the said Eleazer F. Backus, in mercy, &c. And let the said William Gould and David Banks, who sue as aforesaid, be in mercy for their false complaint against the said Eleazer F. Backus for the residue of the said sum of fifty thousand dollars, whereof the said Eleazer F. Backus is acquitted; and the said Eleazer F. Backus go thereof without day, &c.

Judgment signed the 22d day of July, one thousand eight hundred and forty-five.

ANSON LITTLE, *Clerk*.

(Endorsed.) Circuit court of the U. S., second circuit, northern district of New York; William Gould and David Banks, qui tam., &c., vs. *Eleazer F. Backus;* judgment roll; plaintiffs in pro. per.; filed July 22, 1845.

Circuit court of the United States,
for the northern district of New York:

ELEAZER F. BACKUS
ads.
WILLIAM GOULD & DAVID BANKS, who sue as well for the United States of America as for themselves.

Bill of exceptions.

The issue thus joined came on to be tried at the October term of this court, held at the city of Albany on this 25th day of October, 1843, before the hon. Alfred Conkling, district judge.

The declaration was debt for the recovery of penalties alleged to have been incurred by the defendants in invading the copy-right of the plffs. in nine volumes of Cowen's Reports, and in the three first volumes of Wendall's Reports, by the publication of a work called a Supplement to Johnson's Digest, or the 3d volume of Johnson's Digest, being a digest of cases decided in various courts of law and equity of the State of New York. The plea was nil debet.

The plaintiffs' counsel, to maintain and prove the said issue on his part, proved and gave in evidence a written contract between plaintiffs and Esek Cowen, dated the 19th day of August, 1823, and was in the words and figures following, to wit:

"Memorandum of agreement, made this nineteenth day of August, one thousand eight hundred and twenty-three, between Esek Cowen, esq., of Saratoga county, N. York, reporter of the decisions of the courts of the State of New York, of the first part, and William Gould and D. Banks of the city and county of New York, and Albany, law book sellers, of the second part. The said Cowen agrees to furnish the said Gould and Banks the reports of the supreme court of the State of New York, in manuscript, for the sum of fifteen hundred dollars per volume, and to continue the same for and during the term of five years, at the same price, or during the whole period of time the said Cowen continues reporter; this is to be at the election of the said Gould & Banks. The volume is to be a royal octavo volume, containing between six or seven hundred pages, similar to the reports of William Johnson. The matter or manuscript for said reports to be furnished quarterly if convenient to the reporter. The said Cowen agrees to purchase from the said Gould and Banks all law books he may want, at the fair retail prices; the books he now owes for to be considered a part of said purchase, which amount of books is to be deducted from the above $1,500, and the balance is to be paid in money.

The said Gould and Banks agree, on their part, to print the said work at the Saratoga Springs, under the care and inspection of the said Cowen, on as good paper as that used in Johnson's Reports; and they will sell the same to the New York bar for the sum of five dollars, in calf, or four dollars and fifty cents in sheep binding, (if exacted,) per volume. And they further agree to furnish the number of volumes wanted by the State, and one to each of the clerks of the Supreme Court, one to the Secretary, and one to the Comptroller, one to each of the Supreme Court judges, and Chancellor, and Lieutenant Governor, and one dozen to said Cowen. It is further agreed and understood between the parties, that the said Gould and Banks are to pay for each and every volume of said Cowen's Reports fifteen hundred dollars, in six months after the publishing of each volume; and all books as aforesaid that said Cowen may owe for shall be deducted from said amount of fifteen hundred dollars; the said volumes may, or may not, include the decisions of the court of errors, and the court of chancery, or either of them, as shall be determined by said Cowen, on consultation with the appointing power, the presidents of those courts; in case the pages of each volume exceed 700 pages, the price is to be raised, if it meets the approbation of the appointing power.

It is further understood and agreed between the parties to this instrument, and in consideration of the sum of fifteen hundred dollars aforesaid, paid by the said Gould and Banks to the said Cowen, that they are to have the copy-right of each volume, and that the same shall be secured or taken out in their own names, and belong exclusively to the said Gould and Banks, and their heirs and assigns forever."

Signed, E. COWEN,
WILLIAM GOULD,
D. BANKS."

Also an agreement in writing between John L. Wendall and the said plaintiffs, bearing date the 19th day of May, 1828, in the words and figures following to wit:

"Articles of agreement, made the nineteenth day of May, in the year of our Lord one thousand eight hundred and twenty-eight, by and between John L. Wendall, of the one part, and William Gould and David Banks, of the other part:

First. It is agreed by and on the part of the said John L. Wendall, (the said William Gould and David Banks performing the agreement on their part, to be done and performed as hereinafter contained,) that during the term of five years, from this present term of the Supreme Court, if he, the said John L. Wendall, shall so long continue the reporter of the Supreme Court, and the court of errors, he shall and will furnish the said Gould and Banks with the reports of the said courts for publication, to be furnished quarterly if practicable; and that the said Gould & Banks shall have the copy-right of the said reports, to them, and their heirs and assigns.

Second. It is agreed on the part of the said William Gould and David Banks, to publish the said reports in royal octavo volumes of between six and seven hundred pages, on paper worth five dollars per ream, and with an improved type to that with which Cowen's Reports are published; that they will furnish the number of copies required by law to be furnished to courts, public officers, and offices by the reporter, free of expense or charge to the said John L. Wendall; and also deliver to him one dozen copies free of expense; that they will sell the said reports to the members of the bar of New York at five dollars and fifty cents, bound in calf, and five dollars, bound in sheep; and that they will pay to the said John L. Wendall one thousand five hundred dollars per volume, for every volume they shall publish, to be paid within six months after publication. It is understood that the said John L. Wendall is to read and correct the proof sheets of the said reports, as the same are furnished to him.

In witness whereof the said parties have hereunto set their hands, the day and year above written.

Signed,
JOHN L. WENDALL,
WILLIAM GOULD,
D. BANKS."

The plaintiffs' counsel then read in evidence a duly authenticated copy of the record of the deposit of the title of a book, described in the words and figures following, to wit:

" Reports of cases argued and determined in the supreme court, and in the court for the trial of impeachments and the correction of errors of the State of New York, by Esek Cowen, counsellor at law, vol. I," in the office of the clerk of U. S. of the southern district of New York, stating that, on the 28th May, 1827, Gould and Banks of that district, had made such deposit, in conformity to an act of Congress for the encouragement of learning, &c. The plaintiffs also read in evidence a certificate of the Secretary of State of the United States, under the seal of the Department of State, certifying that, on the 26th day of July, 1824, Gould and Banks had deposited in the office of the Department of State a certain book, entitled "Reports of cases argued and determined in the supreme court, and in the court for the trial of impeachments and the correction of errors of the State of New York, by Esek Cowen, counsellor at law, vol. I."

The copy-right whereof was claimed by them as proprietors, under the provisions of the act of Congress for the encouragement of learning, &c.

Similar papers establishing similar facts were read in evidence, as to the other volumes specified in this declaration in the cause; and the following table exhibits the facts thereby proved:

Title of volume.	Time of deposit of title of book.	Time of deposit of book.
I. Cowen's Reports	17 April, 1824	26 July, 1824.
II. "	6 Oct., 1824	15 Dec., 1824.
III. "	21 April, 1825	3 June, 1825.
IV. "	5 Dec., 1855	5 April, 1826.

V.	Cowen's Reports	-	16 Nov., 1826	-	19 Dec., 1826.
VI.	"	-	28 May, 1827	-	28 Sept., 1827.
VII.	"	-	23 Jan., 1828	-	13 April, 1828.
VIII.	"	-	21 April, 1829	-	21 May, 1829.
IX.	"	-	13 Nov., 1829	-	20 Jan., 1830.
I.	Wendell's Reports	-	2 Feb., 1829	-	30 April, 1829.
II.	"	-	5 Sept., 1829	-	19 Oct., 1829.
III.	"	-	7 April, 1830	-	18 May, 1830.

The title of Wendell's Reports, as deposited, is the same as that of Cowen's Reports, except the name of John L. Wendell is substituted in the place of Esek. Cowen, and that the supreme court is described as the supreme court of judicature in the title page of the said volumes.

G. M. Davison testified, that he printed, for the plaintiffs in this cause, the nine volumes of Cowen's Reports, and the three first volumes of Wendell's Reports, mentioned in the declaration in this cause; that he resided, whilst printing the said volumes, at Saratoga Springs, and that when the printing of each volume was finished, he forwarded the printed sheets of the edition to the book store of the plaintiffs, in the city of Albany, and then made a charge against the plaintiffs, on his books, for printing the same; and that from those data, he is enabled to state, that the printing of the said several volumes was finished at the dates hereinafter specified, and not before, that is to say:

1	Cowen's Reports	-	-	May 1, 1824.
2	"	-	-	Nov. 6, 1824.
3	"	-	-	May 1, 1825.
4	"	-	-	Dec. 17, 1825.
5	"	-	-	Dec., 1826.
6	"	-	-	July, 1827.
7	"	-	-	Feb. 13, 1828.
8	"	-	-	May 7, 1829.
9	"	-	-	Jan'y 1, 1830.
1	Wendell's Reports	-	-	Feb. 11, 1829.
2	"	-	-	Sep. 15, 1829.
3	"	-	-	April 20, 1830.

The witness further testified, that the plaintiffs, at the times last above stated, transacted business together in the city of New York, under the name, style, and firm of "Gould & Banks;" and in the city of Albany, under the name, style, and firm of "William Gould & Co."

He further testified, that in the publication of the said nine volumes of Cowen's Reports, and the said three first volumes of Wendell's Reports, a copy of the record of the deposit of the title of each of the said volumes was printed or inserted, according to the requirements of the statute in such case made and provided, on the page immediately following the title of the book, in respect to which the deposit was made.

The plaintiffs next read in evidence the depositions of Mordecai Manassah Noah and William L. Stone, from whose testimony it appeared, that a copy of the record of the deposit of the title of each of the volumes hereinafter enumerated, was published in the newspapers, and at the times, hereinafter specified, that is to say:

Title of volume.	Title of newspaper.	Times of publication.
I. Cowen's Reports	- National Advocate -	- 7, 14, 21, 28 May, 1824.
II. "	- National Advocate -	- 8, 15, 22, 29 Oct'r, 1824.
III. "	- New York National Advocate	- 9, 16, 23, 29 June, 1825.
IV. "	- Same paper - -	- 3, 10, 17, 24 Mar., 1826.
V. "	- Commercial Advertiser -	- 22 and 27 Dec., 1826, 4 and 11 Jan'y, 1827.
VII. "	- Same paper - -	- 2, 9, 16, 23 April, 1828.
I. Wendell's Reports	- Same paper - -	- 27 April, 1829, and 4, 11, 18 May, 1829.
II. "	- Same paper - -	- 7, 12, 19, 27 Oct'r, 1829.

And that the said newspapers were published in the city of New York.

The depositions of Messrs. Noah & Stone, hereinbefore stated, were taken under a section of the Judicial act of the U. S., authorizing depositions to be taken, where the witness resides more than 100 miles from the place of trial. And to give jurisdiction to the officer before whom the depositions were taken, an affidavit was made, of which the following is a copy:

Circuit court of the United States, for the second circuit and northern district of New York.

William Gould and David Banks, who sue as well for the United States of America as for themselves, in this behalf,
vs.
Eleazer F. Backus.
} Action of debt.

William Gould, David Banks, and Anthony Gould, who sue as well for the United States of America as for themselves, in this behalf,
vs.
Eleazer F. Backus.
} Action of debt.

William Gould and David Banks
vs.
Eleazer F. Backus.
} Action on the case.

William Gould, David Banks, and Anthony Gould,
vs.
Eleazer F. Backus.
} Action on the case.

Southern district of New York, ss:

John L. Wendell, of the city of Albany, in the State of New York, being duly sworn, doth depose and say, that he, this deponent, is the real plaintiff in the above entitled causes, and that the above named William Gould, David Banks, and Anthony Gould, are mere nominal plaintiffs, the said causes, as far forth as individual interest is concerned, being prosecuted for the sole benefit of this deponent; that he, this deponent, is a counsellor of the district court of the United States for the northern district of New York, and was admitted such counsellor in the year of our Lord one thousand eight hundred and twenty-five, and that he verily believes that the testimony of William L. Stone, Mordecai Mannassah Noah, Philip J. Forbes, and Abraham W. Lewis, of the city of New York, and John J. Mumford, of the city of Brooklyn, in the State of New York, is material and necessary for this deponent, in the prosecution of the said causes; that the said William L. Stone, Mordecai Mannassah Noah, Philip J. Forbes, Abraham W. Lewis, and John J. Mumford, live or reside more than one hundred miles from the city of Albany, in the State of New York, where the court, at which this deponent expects the said causes will be tried, is appointed by law to be held.

And this deponent further says, that he is informed and believes, that Eleazer F. Backus, the above named defendant, resides in the city of Philadelphia, in the State of Pennsylvania, and that Samuel Cheever, esq'r, the attorney of the said defendant in the above entitled causes, resides in the county of Saratoga, in the State of New York, upward of one hundred and fifty miles north of the city of New York.

JOHN L. WENDELL.

Sworn, the 20th day of September, 1843, before me—

M. ULSHOFFER, *F. J. C. P.*

The plaintiffs then read in evidence the depositions of Thomas McKellar and Philip G. Collins, whereby it appeared, in 1838, Eleazer F. Backus, the defendant in this cause, published a book or work entitled "A Digest of the Causes Decided and Reported in the Superior Court of the City of New York, the Vice Chancellor's Court, the Supreme Court of Judicature, the Court of Chancery, and the Court for the Correction of Errors, of the State of New York, from 1823 to Oct., 1836, with Tables of the Names of the Cases, and of Titles and References; being a Supplement to Johnson's Digest," containing, in the body of the work, 597 pages, in double columns; in preliminary matter, 16 pages; and in a table of the names of cases at the end, 68 pages; that the book was stereotyped at a cost of $1,839; that the stereotyping was finished 26th April, 1838; and that two editions of the work were printed for the defendant by J. B. and P. G. Collins, in Philadelphia, as follows, viz: On the 1st May, 1838, an edition of 250 copies; and on 11th July, 1838, another edition of 250 copies.

The plaintiffs next read in evidence, a deposition of Haling Cowperthwaite, from which it appeared, that a firm of booksellers, in the city of Philadelphia, of which the deponent was a member, sold, for the defendant, about 500 copies of the work last above mentioned, between May, 1838, and September, 1841, and accounted to the defendant for the same; that of the said number of volumes, 387 were received between 1st May, 1838, and 1st October, 1839, and the residue subsequently; that the number of volumes may have fallen 30 or 40 short of 500, but the deficiency, if any, did not exceed that quantity.

Samuel S. Randall testified, that he had carefully compared the last mentioned work, viz, the Digest published by the defendant in 1838, called a Supplement to Johnson's Digest, and referred to in the testimony of the said Thomas McKellar and Philip G. Collins, with the indexes of the nine volumes of Cowen's Reports, and with the indexes of the three first volumes of Wendell's Reports, and that, on such comparison, he found that at least 392½ pages, equal to 24½ sheets, had been copied from the indexes of the said volumes, and transferred to, and printed in the said work, so published by the defendant; that there had been copied from the indexes of the several volumes, the number of pages set opposite to each volume in the schedule following:

Title of book.	No. of pages.
I. Cowen	40
II. "	29
III. "	29
IV. "	39
V. "	54
VI. "	40
VII. "	47
VIII. "	26
IX. "	28
I. Wendell's	21
II. "	19½
III. "	20—392½

The witness further testified, that the matter copied from the indexes of the nine volumes of Cowen's Report, had been copied almost literally; but that it was not so as to the matter copied from the indexes of the three first volumes of Wendell's Reports. In respect to the indexes to which last volumes, the same idea is expressed in defendant's Digest; but sometimes in different language, sometimes word for word, or literally, and sometimes substantially, as in the indexes. The witness gave several instances in which he considered the matter from the indexes of the 9 volumes of Cowen's Reports, and the three first volumes of Wendell's Reports, substantially copied into the said Digest, published by defendant.

It was agreed, that the indexes to the 9 volumes of Cowen's Reports, and the three first volumes of Wendell's Reports, as published and in use, and the printed copy of the said 3d volume of Johnson's Digest, being the book complained of, as infringing the plaintiffs' copy right, might be referred to on any argument of the cause, as evidence in the cause, it being impracticable to insert them in a bill of exceptions.

The witness further testified, that the index to the second vol. of Wendell's Reports, contained 28 pages, 19½ of which had been transferred to, and printed in, defendant's said Digest; and as to the other 8½ pages, the change in the phraseology was so great, that he did not consider it transferred to said Digest.

On being cross-examined by defendant's counsel, the witness testified, that there is no sentence in said 3d volume of said digest, taking the whole sentence together, which is a literal copy of any sentence in the indexes of either of the volumes of Cowen's or Wendell's Reports, the digest varying from the indexes in the numbers of the placita, and in reference to the volumes of reports. Witness is a counsellor at law in the supreme court of the State of New York; is acquainted with the two first volumes of Johnson's Digest; the 3d volume of said digest, (the book in question,) is a continuation of that work, and is a concise statement of the principles decided in the several courts of law and equity in the State of New York, with a reference to the volume in which the case may be found. The matter in the indexes of Cowen's and Wendell's Reports, so far as it is transferred to said digest, is not put into the digest consecutively, as it is in the indexes of the volumes of the reports, but is scattered through the digest under different and appropriate heads, and is picked out, here and there, from the indexes of the several volumes. The arrangement of the matter under different and appropriate heads, constitutes a great share of the digest, and gives it all its value. A publication of the matter in the indexes of the volume, simply as it appears in those indexes, without being arranged under different and appropriate heads, would be of no value. This digest is an entirely different work from the reports, of which it is a digest; it cannot be considered as in any manner a re-publication of those reports. Consider it a good digest. A good digest would not injure the work digested, but would promote the sale of the work thus digested. But many persons might buy the digest, who could not afford to buy the original work.

On being re-examined, the witness further testified, that the greater part of the matter taken from the indexes of the nine volumes of Cowen's Reports, and the three first volumes of Wendell's Reports, is a literal copy from the said indexes, and is the same in the digest as in the indexes, with the exception of the number of the placita, and the reference to the volume. It is not so, however, with the 2d vol. of Wendell's Reports; only about one-half of the matter taken from the index of that volume is copied literally, the residue is copied substantially. But, in the latter case, there appears to have been a studied attempt at change, by the transposition of words, or the like, without change of idea. The counsel for the plaintiffs here rested his cause.

And thereupon the defendant's counsel insisted, that the plaintiffs had failed to show themselves entitled to the copy-right to any or either of the said three first volumes of Wendell's Reports, and prayed the court so to instruct the jury.

But the counsel for the plaintiffs claimed, that the plaintiffs had succeeded in showing a full compliance with the requirements of the statute on the subject, to secure the copyright of the first, second, third, and fifth volumes of Cowen's Reports, and the second volume of Wendell's Reports, and admitted as to the residue of the volumes set forth in the declaration, they had failed in showing such compliance.

Whereupon the court decided, that the proofs were sufficient to entitle the plaintiffs to the copyright to the 1st, 2d, and 5th volumes of Cowen's Reports, and the 2d volume of Wendell's Reports, and that he should so charge and instruct the jury; to which decision the defendant's counsel excepted.

The witness, (S. S. Randalll,) was then asked to state the aggregate of the pages taken from the 1st, 2d, and 5th volumes of Cowen's Reports, and from the second volume of Wendell's Reports, and printed in the digest published by the defendant, in the manner before testified to by him; and the witness stated the aggregate to be 142½ pages, which, at 16 pages to the sheet, amount to 8⅞ sheets.

The defendant's counsel then insisted on the following propositions, and prayed the court to instruct the jury accordingly, to wit:

First. That John L. Wendell, and not the plaintiffs, was the owner and proprietor of the copyright to the said 1st, 2d, and 5th volumes of Cowen's, and to the said second volume of Wendell's Reports, and that, by the statute, no person but the owner or proprietor could maintain said suit for said penalty, and prayed the court so to instruct the jury. But the court decided that the suit might be maintained in the name of William Gould and David Banks, notwithstanding the facts set forth in the affidavits of John L. Wendell, and so instructed the jury, and refused to instruct said jury as requested by defendant's counsel; to which decision, instruction, and refusal, the counsel for the defendant excepted.

Second. That the said books called the 1st, 2d, and 5th volumes of Cowen's Reports, and 2d volume of Wendell's Reports, are not the subject of a copyright, and the publisher of them could acquire no exclusive right to the publication thereof, and therefore could not be unlawfully infringed, and prayed the court so to instruct the jury. But the court decided, that, although the opinions of the several courts, as contained in said volumes of reports, were not the subject of a copyright, yet, that the indexes of said volumes, and the statement of the cases preceding the opinions, and the marginal notes, or synopsis of the case, at the head of each case, were the subject of a copyright, for any infringement of which this action would lie, and so charged and instructed the jury, and refused to charge or instruct the jury as prayed by the defendant's counsel, to which decision, charge, and instruction, and refusal, the defendant's counsel excepted.

Third. The defendant's counsel insisted, that if the said indexes were the subject of a copyright, yet, it was the duty of the proprietor thereof, who obtained the copyright, to express in the title deposited and published, (where he was not entitled to a copyright of the whole book,) the matter for which he claimed such copyright; that he could not obtain a valid copyright to such matter, which was a very small portion of the work, under a general claim to a copyright to the whole book, and in this case he had not only not claimed any such copyright to the indexes, but merely a copyright to the report of the cases, and therefore had not acquired any valid copyright to such indexes, and prayed the court so to instruct the jury. But the court decided, that a copyright to the whole book would secure to the proprietors the exclusive right to such matter in the book as was susceptible of a copyright, although such matter composed ever so small a portion of the book, and so instructed the jury; and refused to instruct said jury as requested by the counsel for the said defendant, to which decision, instruction, and refusal, the counsel for the defendant excepted.

Fourth. The counsel for the defendant also insisted, that the plaintiffs having obtained a copyright purporting to be for the whole book, when they were only entitled to a copyright for a very small portion of the matter contained in such book, such copyright was wholly void, and no action would lie for any infringement of it, and prayed the court so to instruct the jury. But the court decided that such copyright would, and did, secure to the plaintiffs the exclusive right to such matter in said book, whether it were more or less, as he was entitled to obtain a copyright for, and that said copyright was not void, and that this action would lie for an infringement or pirating of any part of the matter in said books, for which the plaintiffs were entitled to obtain a copyright, and so instructed the jury, and refused to instruct the jury as prayed by defendant's counsel; to which decision, instruction, and refusal, the defendant's counsel excepted.

Fifth. The counsel for the defendant also further insisted, that the publication of the said supplement, or 3d volume of Johnson's Digest, was not a printing or publishing of the said 1st, 2d, and 5th volumes of Cowen's Reports, and 2d volume of Wendell's Reports, of which the said plaintiffs claimed to have the copy-right, within the section of either of the acts of Congress giving said penalty. That said penal sections of said acts were to be construed strictly, and did not impose any penalty for printing or publishing a small portion of the matter for which a copy-right was obtained; that, by the terms of the statute, the penalty was only inflicted for an unauthorized printing, reprinting, or publishing, &c., a copy or copies of the whole of the map, chart, book or books, for which the copy-right had been obtained, and that for such printing, reprinting, or publishing any smaller portion than the whole, this action could not be sustained, and prayed the court so to instruct the jury. But the court decided, that an action for the penalty, given by the penal section of the act, would lie for the printing, reprinting, or publishing by the defendant of any part or portion of the matter in said 1st, 2d, and 5th volumes of Cowen's Reports, and 2d volume of Wendell's Reports, to which the plaintiffs were entitled to a copy-right, and so instructed the jury; and refused to instruct the jury, as prayed by the defendant's counsel; to which decision, instruction, and refusal, the counsel for the defendant excepted.

Sixth. The defendants counsel also insisted that the offence for the which the penalty sued for was inflicted by the act of Congress, was in the nature of a criminal offence; that the penalty was inflicted by the statute in part, as a punishment for a criminal offence, and in part as a punishment for a tortuous, if not a criminal, invasion of private property, and that the action was local; and that the act or offence for which this action was brought, was committed in the State of Pennsylvania, and therefore out of the jurisdiction of this court, and consequently the present action could not be sustained, and prayed the court so to instruct the jury. But the court decided that the action could be sustained in any State of the Union, and so charged the jury, and refused to instruct the jury as prayed by the defendant's counsel; to which decision, charge, and refusal the defendant's counsel excepted.

Seventh. The counsel for the defendant also insisted, that the publication by the defendant of a bona fide digest of the 1st, 2d, and 5th volumes of Cowen's Reports, and 2d volume of Wendell's Reports, was not an infringement of the copy-right of the plaintiffs to said books; it was a benefit and not an injury to those books; and prayed the court so to instruct the jury, that if they found, from the evidence in the case, that the supplement, or 3d volume of Johnson's Digest, published by the said defendant, was a bona fide digest of the decisions of the cases contained in said volumes, and was published by the defendant in good faith, and not for the purpose of furnishing to the public the matter contained in said volumes in a cheaper form or for a less price than those volumes were sold for; and that said digest was, in fact, a benefit instead of an injury to said volumes, and would promote the sales thereof; that then said publication was no infringement of the plaintiffs' said copy-right, and this action could not be sustained, and the defendant would be entitled to their verdict. But the court refused so to instruct the jury; but did charge and instruct the jury, that if the defendant had transferred to his said digest any part of the matter contained in the indexes of said 1st, 2d, and 5th volumes of Cowen's Reports, or 2d volume of Wendell's Reports, and thus availed himself of the labor of others contained in books of which the plaintiffs held the copy-right, the plaintiffs were entitled to their verdict; to which refusal and charge and instruction the defendant's counsel excepted.

Eighth. The counsel for the defendant also insisted, that from the very nature of the work published, the same idea contained in the indexes to said volumes of reports, if correctly stated in said indexes, must necessarily be stated in the digest published by defendant; and if published in English, substantially the same words must be used; and if the work was a bona fide digest, and not an evasion for the purpose of furnishing the public with the work in a cheaper form than the original, the publication of said digest by the defendant could not be deemed an invasion of the plaintiffs' copy-right, unless the matter in said indexes had been literally transferred to the defendant's digest, and prayed the court so to instruct the jury. But the court refused so to instruct the jury, but instructed them that if the defendant had transferred to the said digest, published by him, any part of the matter contained in the indexes to said 1st, 2d, and 5th volumes of Cowen's Reports, and 2d volume of Wendell's Reports, it was an invasion of the plaintiffs' said copy-right, for which this action would lie; to which refusal and instruction the counsel for the defendant excepted.

Ninth. In regard to the amount of the penalty to be recovered, the defendant's counsel insisted that the plaintiffs could only recover 50 cents for every sheet of the matter transferred from said index to 1st, 2d, and 5th volumes of Cowen's Reports, and 2d volume of Wendell's, to the said digest of said defendants, as had been proved to have been found in his possession, either printing or printed, published, or exposed for sale; and that there was no legal proof that any such sheets of said matter had been so found in said defendants' possession, and prayed the court so to instruct the jury. But the counsel for plaintiffs insisted that they were entitled to recover 50 cents for every sheet of such matter which had been published, or procured to be published, by the defendant, whether the same were proved to have been found in the defendant's possession or not; and so the court decided and instructed the jury, and refused to instruct the jury as prayed by the counsel for the defendant; to which decision and instruction, and refusal to instruct, the defendant's counsel excepted.

And with such charge and instruction, the court submitted the cause to the jury, who, under such decisions, charge, and instruction, found a verdict for the plaintiffs for $2,069 75 debt, and six cents costs.

And inasmuch as the several matters so given in evidence, and the said several decisions, instructions, and charge, and refusals to instruct and charge, by the said court, and the several exceptions of the counsel for the defendant thereto, do not appear upon the record of said finding of said jury, the counsel for the defendant tendered this bill of exceptions, containing said several matters, to his honor the district judge, before whom said cause was tried, to which he was pleased to affix his seal according to the practice of said court, and in pursuance of the statute in such case made and provided.

ALFRED CONKLING. [SEAL.]
SAML. CHEEVER, *Atty. for Deft.*
SAML. STEVENS, *of counsel.*

(*Endorsed.*)

Circuit court of the United States for the northern district of New York. Eleazer F. Backus ads. William Gould and David Banks, who sue as well for the United States of America as for themselves. Copy bill of ex. in act. of debt. Saml. Cheever, atty. for deft. Filed Oct. 17, 1844.

Supreme Court of the United States of America:

ELEAZER F. BACKUS, plaintiff in error,
vs.
William Gould & David Banks, who sue as well for the United States of America as for themselves, defendants in error.

Assignment of Errors. Of the term of December, 1845.

Afterwards, to wit, on the first Monday of December, in this same term, before the justices of the Supreme Court of the United States of America, at the city of Washington, comes the said Eleazer F. Backus, by Samuel Cheever, his attorney, and says that, in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit, that the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said William Gould & David Banks, who sue as well for the United States of America, as for themselves, to have and maintain their aforesaid action thereof against him, the said Eleazer F. Backus. There is also error in this, to wit, that, by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid given, was given for the said William Gould and David Banks against the said Eleazer F. Backus, whereas, by the law of the land, the said judgment ought to have been given for the said Eleazer F. Backus against the said William Gould and David Banks.

And the said Eleazer F. Backus prays that the judgment aforesaid for the errors aforesaid, and other errors in the record and proceeding aforesaid, may be reversed, annulled, and altogether held for nothing; and that he may be restored to all things he has lost by occasion of the said judgment, &c.

SAM'L CHEEVER,
Att'y for Plaintiff in Error.

Supreme Court of the United States of America:

Eleazer F. Backus, plaintiff in error, vs. William Gould and David Banks, who sue as well for the United States of America as for themselves. Assignment of Errors.

Filed Nov. 22, 1805. S. CHEEVER, *Att'y.*

In Supreme Court U. S.

WILLIAM GOULD and DAVID BANKS,
who sue as well, &c.
ads.
ELEAZER F. BACKUS.

And hereupon the said William Gould and David Banks, who sue as well, &c., in their proper person, freely come here into court, and say, that there is no error, either in the record or proceedings aforesaid, or in giving the judgment aforesaid; and they pray that the court now here may proceed to examine, as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c. But because, &c.

WILLIAM GOULD,
DAVID BANKS,
Def'ts in error, in pro. per.
By J. L. WENDELL.

(Endorsed.)

In Supreme Court U. S. William Gould and David Banks, who sue as well, &c., ads. Eleazer F. Backus. Joinder in error. Def'ts in pro. per.

Filed, 8th Dec., 1845.

SUPREME COURT OF THE UNITED STATES.

No. 143.

HEZEKIAH SMITH, PLAINTIFF IN ERROR,

VS.

WILLIAM HUNTER, TREASURER, &c., JAMES B. CAMERON, AUDITOR, &c., AND THE PRESIDENT & TRUSTEES OF THE MIAMI UNIVERSITY.

IN ERROR TO THE SUPREME COURT OF OHIO, IN AND FOR THE COUNTY OF BUTLER.

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J. & G. S. Gideon, printers.

UNITED STATES OF AMERICA:

To the honorable the judges of the supreme court of the State of Ohio, in and for the county of Butler, greeting:

Whereas, in the record and process, and also in the rendering judgment, in a certain action in chancery which was in the said court, between Hezekiah Smith, plaintiff, and William Hunter, treasurer of Butler county, Ohio, James B. Cameron, auditor of Butler county, Ohio, and the President and Trustees of the Miami University, defendants, manifest error hath intervened, as it is said, to the great damage of the said Hezekiah Smith, as by his complaint we are informed; and we being willing that the error aforesaid, (if any) be corrected, and full and speedy justice be done in this behalf to the said parties, command you, that the record, process and judgment aforesaid, with all things touching the same, under your seals, distinctly and plainly, without delay, you send and certify to the judges of the Supreme Court of the United States, on the first day of the next term of said court; so that the judgment aforesaid being inspected, the court may further, for correcting the error aforesaid, do that which of right and according to law ought to be done.

Witness the honorable Roger B. Taney, chief justice of the United States of America, this third day of November, in the year of our Lord one thousand eight hundred and forty-five, and in the seventieth year of the American independence.

[SEAL.]

Attest: WM. WIMER, *Clerk.*

The State of Ohio, Butler county, sct:

In obedience to the command of the within writ, the record and proceedings, and all things touching the case whereof mention is within made, is herewith returned duly certified and sealed, as is within commanded.

In testimony whereof, I, Taylor Webster, clerk of said supreme court of the State of Ohio, within and for the said county of Butler, have herewith set my hand and official seal, at Hamilton, the twenty-eighth day of November, one thousand eight hundred and forty-five.

[SEAL.]

TAYLOR WEBSTER,
Clk. Butler Supreme court.

THE UNITED STATES OF AMERICA,
Supreme Court of the United States.

To William Hunter, treasurer of Butler county, Ohio, James B. Cameron, auditor of Butler county, Ohio, and the President and Trustees of the Miami University, greeting:

Whereas Hezekiah Smith has obtained the allowance of our writ of error to the supreme court of the State of Ohio, in and for the county of Butler, directed to remove into the said Supreme Court, to be holden at the city of Washington, on the first Monday in the month of December next, the record of a certain plaint, process, proceedings, and judgment in an action in chancery, wherein you, the said William Hunter, treasurer, &c., James B. Cameron, auditor, &c., and the President and Trustees of the Miami University, in that action, lately recovered against the said Hezekiah Smith the sum of thirteen dollars and three cents costs, as by the record in the said supreme court aforesaid remaining appears; in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said Hezekiah Smith we are informed, and our said writ of error granted, issued, and allowed as aforesaid, for the purpose of correcting the errors aforesaid alledged, if any there be. You are, therefore, hereby commanded and cited, to be and appear before the judges of the said Supreme Court, at the city of Washington, at the next term of said court to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness the honorable Roger B. Taney, chief justice of the United States of America, this third day of November, in the year of our Lord one thousand eight hundred and forty-five, and in the seventieth year of the American independence. [SEAL.]

Attest: JOHN McLEAN,
Justice Sup. Court U. States, 7th Circuit.

The State of Ohio, Butler county, sct:

I, William J. Elliott, sheriff of the county of Butler aforesaid, make oath and say, that on the twenty-ninth day of November, 1845, I served the within writ upon William Hunter, late treasurer of the county aforesaid, and upon William Easton, present treasurer of said county, also upon Ludwick Bety, the present auditor of said county, (the said James B. Cameron, late auditor, &c., being dead,) by delivering to each of them an exact copy thereof; that I served the same on the said President and Trustees of Miami University, by leaving at the residence of C. D. McMasters, the president of said University, an exact copy thereof on the same day.

WM. J. ELLIOTT,
Shff. B. Co. Ct

Sworn to and subscribed before me, a justice of the peace in and for the said county of Butler, this 29th day of 1845.

M. P. ALSTON, *J. P.*

HEZEKIAH SMITH,
vs.
WILLIAM HUNTER, treasurer, &c., et al.

Butler county, ss:

Be it remembered, that on the second day of May, in the term of May, one thousand eight hundred and forty-four, before the honorable

Matthew Birchard, esquire, and N. C. Read, esquire, two of the judges of our supreme court of the State of Ohio, here at Hamilton, in the county of Butler aforesaid, came Hezekiah Smith, by Lewis D. Campbell, his solicitor, and produced here in court the docket and journal entries, with the original papers, and decree rendered in a bill in the chancery side of the court of common pleas of the said county of Butler, before the honorable Elijah Vance, esquire, president, and his associate judges of our court of common pleas, between the said Hezekiah Smith, complainant, and William Hunter, treasurer of Butler county, Ohio, James B. Cameron, auditor of Butler county, Ohio, and the President and Trustees of the Miami University, defendants; which entries, original papers, and decree, follow in these words, to wit:

Pleas at Hamilton, before the honorable Elijah Vance, esquire, president, and Vincent D. Enyart, N. Wade, and James O'Connor, esquires, associate judges of our court of common pleas, of the county of Butler, in the State of Ohio, on the sixth day of March, one thousand eight hundred and forty-three.

HEZEKIAH SMITH,
vs.
WILLIAM HUNTER, treasurer, et al. }

Butler county, ss:

Be it remembered, that on the twenty-fourth day of December, one thousand eight hundred and forty-two, here at Hamilton, comes Hezekiah Smith, by L. D. Campbell, his solicitor, and exhibits here in court his certain bill or petition in equity, in the words following, to wit:

To the honorable the judges of the court of common pleas, within and for the county of Butler, in the State of Ohio, in chancery sitting; humbly complaining, your orator, Hezekiah Smith, of the township of Oxford, in the county of Butler and State aforesaid, represents to your honors, that he now holds as tenant under leases from the President and Trustees of Miami University, certain lands and premises, situate in the township aforesaid, being a part of the lands set apart for the endowment of said University, to wit, the whole of lot known and described as lot number three, in section numbered thirty-three, in township numbered five, and range numbered one, east of the meridian line, drawn from the mouth of the Great Miami river, containing one hundred and ten acres; also eighteen acres in the south part of lot numbered six, in the same section, township, and range; also the in-lots, in the town of Oxford, known and designated on the plat of the said town by the number one hundred and seventy-one and one hundred and seventy-two, which said premises he holds for a term of years, under certain conditions and stipulations, which will more fully and at large appear by reference to his said leases herewith filed, marked A, B, C, & D, and made a part of this bill. Your orator further represents, that by the law of the State of Ohio, entitled "an act to establish the Miami University," passed February seventeenth, eighteen hundred and nine, it was provided, in reference to the lands set apart for the endowment of the Miami

University, of which the premises aforesaid are a part as aforesaid, as follows, to wit: "that the lands appropriated and vested in the corporation, with the building, which may be erected thereon for the accomodation of the president, professors, and other officers, students and servants of the University, and any buildings appertaining thereto, and also the *dwelling houses and other buildings* which may be erected on the lands, *shall be exempt from all state taxes*," by which said provision your orator believes that he is, as tenant aforesaid, not chargeable with any taxes which may be assessed by virtue of any enactment of the State, made or ordered since its passage as aforesaid; and your orator, desiring to be relieved as far as possible from the burthens of taxation, incident to owning lands in other parts of the country, and relying fully and implicity upon the protection of the provision of the act aforesaid from subsequent taxation, under laws which the State might enact, became a tenant thereon as aforesaid, and has erected buildings, and has made great improvements on his said premises, for his future comfort and convenience. And your orator further states to your honors, that since he has erected and made permanent improvements on said premises, the auditor and treasurer of the county of Butler, pretend that there is due from your orator, large amounts of money, for arrearges of taxes due on said premises, which have been assessed under the requirements and provisions of the law, enacted by the said State in eighteen hundred and thirty-nine, and in consequence of your orator's not having paid the said taxes, the said auditor of said county has advertised, "that the whole of said several tracts of land, or so much thereof as will be necessary to pay the said taxes, interest, and penalty charged thereon, will be sold at the court-house at Hamilton, on the last Monday in December instant, by the treasurer, &c. And your orator verily believes, that it is the design of the said treasurer to offer the said premises at public sale, for the taxes so assessed as aforesaid, which said tax is denominated a school tax, and is levied, as your orator is informed and verily believes, pursuant to the provisions of the said law of the State, entitled "an act providing for the levying of a school tax in Oxford township, in Butler county, passed March, 16th, 1839; all of which acts and proceedings, your orator believes, are contrary to the spirit and true intent and meaning of the provisions of the law of eighteen hundred and nine, excepting said property from all State taxes, and conflict with the terms and conditions of the said several leases under which he holds the said premises. Your orator, being without any adequate remedy at law, humbly prays your honors, that the said treasurer of Butler county may be enjoined from proceeding to offer the said premises, or any part thereof, for sale, for the payment of the taxes aforesaid, pursuant to the advertisement aforesaid; and that, on the final hearing of the cause, the treasurer of the county of Butler aforesaid, and the auditor of the county of Butler aforesaid, and their successors in office, may be forever enjoined from proceeding in any manner, to collect from your orator any taxes, pursuant to the requirements of said law, so enacted by the State as aforesaid, on his said lands and premises, so held as aforesaid under leases from the "President and Directors of the Miami University."

And your orator further prays your honors, that William Hunter, treasurer of the county of Butler aforesaid, James B. Cameron, auditor of the county of Butler aforesaid, and the said President and Directors of the Miami University, may be made defendants to this bill, and that they may answer the same, &c.; and that in addition to the relief prayed for as aforesaid, your orator may have such additional relief as to your honors may seem equitable and proper; and as in duty bound, &c.

HEZEKIAH SMITH.
L. D. CAMPBELL, *Sol.*

The State of Ohio, Butler county, ss:

Hezekiah Smith, within named, makes oath and says, that the matters and things stated and set forth in the within bill, as from his own knowledge are true, in substance and in fact, and that so far as the same are stated as from the information of others, he believes them to be true.

HEZEKIAH SMITH.

Sworn to and subscribed before me, this 23d December, 1842.

TAYLOR WEBSTER,
Master commissioner in Chancery.

I allow an injunction as prayed for in this bill, to be continued until the further order of the court, and order the plaintiff to give bond, according to law, in the sum of $100 00.

Dec'r 23d, 1842.

V. D. ENYART,
Associate Judge.

A.

This indenture, made the sixteenth day of April, in the year eighteen hundred and thirty-two, between Elijah Hand and Hannah Hand, of Butler county, in the State of Ohio, of the first part, and Hezekiah Smith, of the said county, of the second part, witnesseth: that in pursuance of an act of Congress, dated the third day of March, eighteen hundred and three, and an act of the General Assembly of the State of Ohio, passed the seventeenth day of February, eighteen hundred and nine, entitled "an act to establish the Miami University," and several acts amendatory thereto, the said Elijah Hand did, on the eighteenth day of February, eighteen hundred and twenty-nine, purchase of the President and Trustees of the Miami University, for the term of ninety-nine years, renewable forever, the lot or tract of land, designated and known on the plat of the Miami College lands by lot numbered three, in section numbered thirty-three, and containing one hundred and ten acres, and twenty-seven hundredths of an acre, being a part of the lands granted by the act of Congress before mentioned; on this condition, that if the said Elijah Hand, or his representative, shall well and truly pay, eighteenth February, every year after the date of said purchase, to the treasurer of the Miami University the sum of nineteen dollars and ninety-four cents, being the interest on the irreducible stock of said lot, at six per centum per annum, then the said Elijah Hand, his assigns or representatives, shall be entitled to hold the said lot or tract of land for the term of ninety-nine years, and shall also be entitled, so often as the lease shall expire, to have the same renewed on the same terms and conditions forever, with all and singular the privileges and immunities granted by the several acts and laws aforesaid, and liable to all the restrictions, penalties, and forfeitures imposed by said acts and laws in case of non-compliance with the terms and conditions herein above stated. Therefore, be it known, that I, the said Elijah Hand, for and in consideration of the sum of three hundred dollars and 00 cents, to me paid by the before named Hezekiah Smith, the receipt of which I do hereby acknowledge, have released and assigned, and by these presents do release, assign, and transfer, all my right, title, claim, interest, to and in the whole of said lot, known on said plat as lot numbered three, in section numbered thirty-three, and containing one hundred and ten acres and $\frac{77}{100}$ of an acre, together with all and singular the appurtenances thereto belonging, subject to an annual rent to be paid to the treasurer of the Miami University on the eighteenth day of February, each and every year after this date, the amount of said rent being nineteen dollars and ninety-four cents, unto the said Hezekiah Smith.

In witness of which, I, the said Elijah Hand and Hannah, wife of said Elijah, hereunto set our hands and seals the day and year first herein written.

ELIJAH HAND, [SEAL.]
her
HANNAH ⋈ HAND. [SEAL.]
mark.

Signed and sealed in the presence of us—
R. MULFORD,
WM. J. GALLAHER.

State of Ohio, Hamilton county, ss:

Before me, R. Mulford, a justice of the peace of said county, personally came Elijah Hand and Hannah Hand, the above named grantors, and acknowledged signing and sealing the foregoing instrument of writing to be their voluntary act and deed, for the purposes therein mentioned; and the above named Hannah, being examined separate and apart from her husband, declares to me, she signed it not by any coercion of her husband, but of her own voluntary act and deed.

In testimony whereof I have hereunto set my hand, the sixteenth day of April, eighteen hundred and thirty-two.

R. MULFORD,
Justice of the peace.

Endorsed: "Received and recorded, May 30th, 1832. Book of records, pages 229 & 230.

JOEL COLLINS, *Sec'y.*

B.

No. 657. *Secretary's office of Miami University.*

Whereas, under and by virtue of the several acts, laws, and ordinances, regulating the disposal of the lands belonging to the Miami University, John Bellew, of the county of Butler, in the State of Ohio, by lease granted by said Miami University, stood seized of in-lot numbered one hundred and seventy-one, in the town of Oxford, in the county of Butler, and State of Ohio, for the term of ninety-nine years, commencing on the second day of January, in the year of our Lord one thousand eight hundred and thirty-three, and renewable forever. And whereas the said John Bellew having failed to pay to the treasurer of said University the annual interest or quit-rent, payable on said lot agreeable to the terms and conditions of his said lease, by reason of which failures, and agreeably to the several acts, laws, and ordinances, prescribing the mode of collecting the quit-rent due and payable to said University, the said lot was executed for the payment of the quit-rent due thereon, and all the rest, residue, and remainder of the said term of ninety-nine years yet to come and unexpired on said lot, was sold at public sale by the collector for the said University, and purchased by Hezekiah Smith, of the county of Butler, in the State of Ohio, on the twenty-second day of December, in the year of our Lord one thousand eight hundred and thirty-seven, as per the return of said collector, on file in the office of the secretary for said University; said in-lot numbered one hundred and seventy-one, fronting on and west of West street, in the said town of Oxford, and being ten poles in length east and west, by four poles in width north and south, and containing forty square poles, the same being a part of the lands set apart for the endowment of the said University.

Now, therefore, *before*, be it known, that if the said Hezekiah Smith, or his representatives, will well and truly pay, on the second day of January, every year after the date hereof, to the treasurer of Miami University, the sum of three dollars, being the amount of interest on the purchase money, at the rate of six per centum per annum, for the said lot or tract of land, then the said Hezekiah Smith, or his assigns or representatives, shall be entitled to hold the said lot or tract of land for all the rest, residue, and remainder of said term of ninety-nine years; and shall also be entitled, so often as the lease shall expire, to have the same renewed on the same conditions forever; with all and singular the privileges and immunities granted by the several acts and laws aforesaid, and liable to all the restrictions, penalties, and forfeitures, imposed by the said acts and laws in case of non-compliance with the terms and conditions herein above stated.

In testimony whereof, I, J. Mayhew, treasurer, by order of the President and Trustees of said Miami University, and according to the law in such case made and provided, have hereunto set [SEAL.] my hand, and affixed the corporation seal of said University, on the twenty-eighth day of December, in the year of our Lord one thousand eight hundred and thirty-seven.

Attest: J. MAHEW, *Treasurer, M. U.*
JOEL COLLINS, *Secretary.*

Countersigned by the president.
R. H. BISHOP.

C.

No. 656. *Secretary's office, Miami University.*

Whereas, under and by virtue of the several acts, laws, and ordinances, regulating the disposal of lands belonging to Miami University, John Bellew, of the county of Butler, in the State of Ohio, by lease granted by said University, stood seized of in-lot numbered one hundred and seventy-two, in the town of Oxford, in the county of Butler and State of Ohio, for the term of ninety-nine years, commencing on the twenty-seventh day of December, in the year of our Lord one thousand eight hundred and twenty-seven, and renewable forever. And whereas the said John Bellew, having failed to pay to the treasurer of said University the annual interest or quit-rent, payable on said lot agreeable to the terms and conditions of his said lease, by reason of which failures, and agreeably to the several acts, laws, and ordinances, prescribing the mode of collecting the quit-rent due and payable to said University, the said lot was executed for the payment of the quit-rent due thereon, and all the rest, residue, and remainder of said term of ninety-nine years, yet to come and unexpired on said lot, was sold at public sale by the collector of said University, and purchased by Hezekiah Smith, of the county of Butler, in the State of Ohio, on the twenty-second day of December, in the year of our Lord one thousand eight hundred and thirty-seven, as per the return of said collector, on file in the office of secretary for said University; said in-lot numbered one hundred and seventy-two being the corner on and south of High street, and on and west of West street, in the said town of Oxford, and being ten poles in length east and west, by four poles in width north and south, and containing forty square poles; the same being a part of the land set apart for the endowment of the said University. Now, therefore, be it known, that if the said Hezekiah Smith, or his representatives, will well and truly pay on the twenty-seventh day of December, every year after the date hereof, to the treasurer of the Miami University, the sum of three dollars, being the amount of interest on the purchase money, at the rate of six per centum per annum for the said lot or tract of land, then the said Hezekiah Smith, or his assigns or representatives, shall be entitled to hold the said lot or tract of land for all the rest, residue and remainder of said term of ninety-nine years, and shall also be entitled, so often as the lease shall expire, to have the same renewed on the same conditions forever; with all and singular the privileges and immunities granted by the several acts and laws aforesaid, and liable to all the restrictions, penalties, and forfeitures imposed by the said acts and laws, in case of non-compliance with the terms and conditions herein above stated.

In testimony whereof, I, J. T. Mahew, treasurer, by order of the President and Trustees of said Miami University, and according to the law in such case made and provided, have hereunto set [SEAL.] my hand and affixed the corporation seal of said University, on the twenty-eighth day of December, in the year of our Lord one thousand eight hundred and thirty-seven.

Attest: J. MAHEW, *Treasurer, M. U.*
JOEL COLLINS, *Secretary.*

Countersigned by the president.

R. H. BISHOP.

Therefore, the sheriff of the county aforesaid is commanded, that he give notice to the said William Hunter, treasurer of the county of Butler, Ohio, James B. Cameron, auditor of Butler county, Ohio, and the President and Trustees of Miami University, to be before the judges of our said court of common pleas at Hamilton, on the fourteenth day of February next, to answer to the bill aforesaid, &c.

And afterwards, to wit, the sixth day of March, eighteen hundred and forty-three, until which day the said sheriff hath to return the said writ according to the statute, &c., before the judges aforesaid here at Hamilton, comes the said Hezekiah Smith, by his solicitor aforesaid, and the sheriff of the county aforesaid, to wit, John R. Wilson, esquire, now returns, that by virtue of the writ aforesaid to him directed, he hath given notice to the said William Hunter, treasurer of Butler county, Ohio; James B. Cameron, auditor of Butler county, Ohio, and the President and Trustees of the Miami University, to be, &c., on, &c., to answer, &c., as by the said writ he was commanded; and the said William Hunter, treasurer of Butler county, Ohio, James B. Cameron, auditor of Butler county, Ohio, and the President and Trustees of the Miami University, being called, by Woods, Weller & Ryan, their solicitors, come and pray leave to imparl to the bill aforesaid, here before the judges of our said court at Hamilton, until the twelfth day of June next, and then to answer; and to them it is granted, &c.

The same day is given to the said Hezekiah Smith here, &c.

On which day, to wit, the twelfth day of June aforesaid, before the judges aforesaid, here at Hamilton, come the parties aforesaid, by their solicitors aforesaid; and the said William Hunter, treasurer of Butler county, Ohio, James B. Cameron, auditor of Butler county, Ohio, and the President and Trustees of the Miami University, by their solicitors aforesaid, demur to the said bill filed by the said complainant, and for cause of demurrer, show that the said Hezekiah Smith, by his bill, has not made out such a case as entitles him to relief in a court of equity, or to any discovery from these defendants. Wherefore, and for other good causes, the said defendants as aforesaid demur to said bill, and pray the judgment of this court, whether they shall be compelled to make any farther or other answer to said bill, and that they may be hence dismissed, with their costs, &c.

WOODS, WELLER & RYAN,
Sol's for def's.

And the said Hezekiah Smith comes and says, that his said bill and the matters therein contained are sufficient to entitle him to the discovery and relief prayed for in his said bill. Wherefore, he prays, that the demurrer of the said defendants may be overruled, and that the discovery and relief prayed for in said bill may be granted him, &c.

L. D. CAMPBELL,
Sol. for compl't.

But because the court now here are not yet advised to give their judgment of and upon the premises, day therefore is given to the parties aforesaid, before the judges of our said court here at Hamilton, until the twenty-fifth day of September next, to hear their judgment thereon, because the court now here thereof not yet, &c.

On which day, to wit, the twenty-fifth day of September aforesaid, before the judges aforesaid, here at Hamilton, come the parties aforesaid, by their solicitors aforesaid.

Whereupon this cause coming on at this term, for hearing upon the bill, and exhibits, and demurrer, and joinder in demurrer, heretofore filed, and the court having seen and fully examined the same, finding that the equity of the case is with the defendants, do order, adjudge, and decree that the said demurrer be sustained; that the injunction heretofore allowed be dissolved, and that the complainant take nothing by his bill aforesaid, and that the said complainant, within sixty days from the rising of this court, pay the costs which have accrued in this cause to the clerk of this court; and that in default thereof execution issue as upon a judgment at law.

The costs of the said complainant being taxed at six dollars and eighty-six cents.

The costs of the said defendants being taxed at six dollars and ninety-three cents.

And hereon comes the said Hezekiah Smith, and appeals from the decree aforesaid, in form aforesaid entered, to the Supreme Court of the State of Ohio, next to be holden at Hamilton, in the county of Butler aforesaid, according to the form of the statutes, &c.

And whereas afterwards, to wit, the second day of May, one thousand eight hundred and forty-four, before the honorable Matthew Birchard, esquire, and N. C. Read, esquire, two of the judges of our said Supreme Court here at Hamilton, come as well the said Hezekiah Smith, by his solicitor aforesaid, as the said William Hunter, of Butler county, Ohio, James B. Cameron, auditor of Butler county, Ohio, and the President and Trustees of the Miami University, by their solicitors aforesaid.

Whereupon, this cause coming on for hearing upon the bill and demurrer, and being fully understood by the court, it is ordered, adjudged, and decreed, that said complainants' said bill be dismissed, and that said complainant pay the cost and charges in this cause to the clerk, within sixty days, and in default thereof that an order issue therefor as upon a judgment at law.

The costs of said complainant being taxed at eight dollars and fifteen cents.